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SENATE

{
REPORT
104-179

VICTIM RESTITUTION ACT OF 1995

DECEMBER 6, 1995.—Ordered to be printed

Mr. HATCH, from the Committee on the Judiciary,
submitted the following

REPORT

together with

ADDITIONAL AND MINORITY VIEWS

[To accompany H.R. 665]

The Committee on the Judiciary, to which was referred the bill (H.R. 665) to control crime by mandatory victim restitution, having considered the same, reports favorably thereon, with an amendment in the nature of a substitute, and recommends that the bill, as amended, do pass.

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The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Victims Justice Act of 1995".

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Short title.
 Sec. 2. Table of contents.

TITLE I—RESTITUTION

Sec. 101. Order of restitution.
 Sec. 102. Conditions of probation.
 Sec. 103. Mandatory restitution.
 Sec. 104. Order of restitution to victims of other crimes.
 Sec. 105. Procedure for issuance and enforcement of restitution order.
 Sec. 106. Procedure.
 Sec. 107. Juvenile delinquency; dispositional hearing.
 Sec. 108. Instruction to Sentencing Commission.
 Sec. 109. Justice Department regulations.
 Sec. 110. Special assessments on convicted persons.
 Sec. 111. Crime Victims Fund.
 Sec. 112. Victims of terrorism act.
 Sec. 113. Effective date.

TITLE II—MISCELLANEOUS PROVISIONS

Sec. 201. Severability.
 Sec. 202. Study and report.

TITLE I—RESTITUTION

SEC. 101. ORDER OF RESTITUTION.

Section 3556 of title 18, United States Code, is amended—

- (1) by striking “may” and inserting “shall”; and
- (2) by striking “sections 3663 and 3664.” and inserting “3663A, and may order restitution in accordance with section 3663. The procedures under section 3664 shall apply to all orders of restitution under this section.”.

SEC. 102. CONDITIONS OF PROBATION.

Section 3563 of title 18, United States Code, is amended—

- (1) in subsection (a)—
 - (A) in paragraph (3), by striking “and” at the end;
 - (B) in the first paragraph (4) (relating to conditions of probation for a domestic crime of violence), by striking the period and inserting a semicolon;
 - (C) by redesignating the second paragraph (4) (relating to conditions of probation concerning drug use and testing) as paragraph (5);
 - (D) in paragraph (5), as redesignated, by striking the period at the end and inserting a semicolon; and
 - (E) by inserting after paragraph (5), as redesignated, the following new paragraphs:
 - “(6) that the defendant—
 - “(A) make restitution in accordance with sections 2248, 2259, 2264, 3663, 3663A, and 3664;
 - “(B) pay the assessment imposed in accordance with section 3013; and
 - “(7) that the defendant will notify the court of any material change in the defendant’s economic circumstances that might affect the defendant’s ability to pay restitution, fines, or special assessments.”; and
- (2) in subsection (b)—
 - (A) by striking paragraphs (2) and (3); and
 - (B) by redesignating paragraphs (4) through (22) as paragraphs (2) through (20), respectively.

SEC. 103. MANDATORY RESTITUTION.

(a) IN GENERAL.—Chapter 232 of title 18, United States Code, is amended by inserting immediately after section 3663 the following new section:

“§ 3663A. Mandatory restitution to victims of certain crimes

“(a)(1) Notwithstanding any other provision of law, when sentencing a defendant convicted of an offense described in subsection (c), the court shall order, in addition to any other penalty authorized by law, that the defendant make restitution to the victim of the offense, or, if the victim is deceased, to the victim’s estate.

“(2) For purposes of restitution, a victim of an offense that involves as an element a scheme, conspiracy, or pattern of criminal activity means any person directly harmed by the defendant’s criminal conduct in the course of the scheme, conspiracy, or pattern, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim’s estate, another family member, or any other person appointed as suitable by the court. In no event shall the defendant be named as such representative or guardian.

“(3) The court shall also order, if agreed to by the parties in a plea agreement, restitution to persons other than the victim of the offense.

“(b) The order of restitution shall require that such defendant—

“(1) in the case of an offense resulting in damage to or loss or destruction of property of a victim of the offense—

“(A) return the property to the owner of the property or someone designated by the owner; or

“(B) if return of the property under subparagraph (A) is impossible, impracticable, or inadequate, pay an amount equal to—

“(i) the greater of—

“(I) the value of the property on the date of the damage, loss, or destruction; or

“(II) the value of the property on the date of sentencing, less

“(ii) the value (as of the date the property is returned) of any part of the property that is returned;

“(2) in the case of an offense resulting in bodily injury to a victim—

“(A) pay an amount equal to the cost of necessary medical and related professional services and devices relating to physical, psychiatric, and psychological care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;

“(B) pay an amount equal to the cost of necessary physical and occupational therapy and rehabilitation; and

“(C) reimburse the victim for income lost by such victim as a result of such offense;

“(3) in the case of an offense resulting in bodily injury that results in the death of the victim, pay an amount equal to the cost of necessary funeral and related services; and

“(4) in any case, reimburse the victim for lost income and necessary child care, transportation, and other expenses incurred during participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense.

“(c)(1) This section shall apply in all sentencing proceedings for convictions of, or plea agreements relating to charges for, any offense—

“(A) that is—

“(i) a crime of violence, as defined in section 16;

“(ii) a felony against property under this title, including any felony committed by fraud or deceit;

“(iii) an offense described in section 1365 (relating to tampering with consumer products); or

“(iv) an offense described in part D of the Controlled Substances Act (21 U.S.C. 841 et seq.); and

“(B) in which an identifiable victim or victims has suffered a physical injury or pecuniary loss.

“(2) In the case of a plea agreement that does not result in a conviction for an offense described in paragraph (1), this section shall apply only if the plea specifically states that an offense listed under such paragraph gave rise to the plea agreement.

“(3) This section shall not apply if the court finds, from facts on the record, that—

“(A) the number of identifiable victims is so large as to make restitution impracticable; or

“(B) determining complex issues of fact related to the cause or amount of the victim's losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim is outweighed by the burden on the sentencing process.

“(d) An order of restitution under this section shall be issued and enforced in accordance with section 3664.”.

(b) CLERICAL AMENDMENT.—The analysis for chapter 232 of title 18, United States Code, is amended by inserting immediately after the matter relating to section 3663 the following:

“3663A. Mandatory restitution to victims of certain crimes.”.

SEC. 104. ORDER OF RESTITUTION TO VICTIMS OF OTHER CRIMES.

(a) IN GENERAL.—Section 3663 of title 18, United States Code, is amended—

(1) in subsection (a)(1)—

(A) by striking “(a)(1) The court” and inserting “(a)(1)(A) The court”;

(B) by inserting “other than an offense described in section 3663A(c),” after “under this title or section 46312, 46502, or 46504 of title 49,”;

(C) by inserting before the period at the end the following: “, or if the victim is deceased, to the victim’s estate”; and

(D) by adding at the end the following new subparagraph:

“(B) The court, in determining whether to order restitution under this section, shall consider the amount of the loss sustained by each victim as a result of the offense, and may consider the financial resources of the defendant, the financial needs and earning ability of the defendant and the defendant’s dependents, and such other factors as the court deems appropriate. To the extent that the court determines that the complication and prolongation of the sentencing process resulting from the fashioning of an order of restitution under this section outweighs the need to provide restitution to any victims, the court may decline to make such an order.”;

(2) by striking subsections (c) through (i); and

(3) by adding at the end the following new subsection:

“(c) An order of restitution made pursuant to this section shall be issued and enforced in accordance with section 3664.”.

(b) SEXUAL ABUSE.—Section 2248 of title 18, United States Code, is amended—

(1) in subsection (a), by inserting “or 3663A” after “3663”;

(2) in subsection (b)—

(A) by amending paragraph (1) to read as follows:

“(1) DIRECTIONS.—The order of restitution under this section shall direct the defendant to pay to the victim (through the appropriate court mechanism) the full amount of the victim’s losses as determined by the court pursuant to paragraph (2).”;

(B) by amending paragraph (2) to read as follows:

“(2) ENFORCEMENT.—An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.”;

(C) in paragraph (4), by striking subparagraphs (C) and (D); and

(D) by striking paragraphs (5) through (10);

(3) by striking subsections (c) through (e); and

(4) by redesignating subsection (f) as subsection (c).

(c) SEXUAL EXPLOITATION AND OTHER ABUSE OF CHILDREN.—Section 2259 of title 18, United States Code, is amended—

(1) in subsection (a), by inserting “or 3663A” after “3663”;

(2) in subsection (b)—

(A) by amending paragraph (1) to read as follows:

“(1) DIRECTIONS.—The order of restitution under this section shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim’s losses as determined by the court pursuant to paragraph (2).”;

(B) by amending paragraph (2) to read as follows:

“(2) ENFORCEMENT.—An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.”;

(C) in paragraph (4), by striking subparagraphs (C) and (D); and

(D) by striking paragraphs (5) through (10);

(3) by striking subsections (c) through (e); and

(4) by redesignating subsection (f) as subsection (e).

(d) DOMESTIC VIOLENCE.—Section 2264 of title 18, United States Code, is amended—

(1) in subsection (a), by inserting “or 3663A” after “3663”;

(2) in subsection (b)—

(A) by amending paragraph (1) to read as follows:

“(1) DIRECTIONS.—The order of restitution under this section shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim’s losses as determined by the court pursuant to paragraph (2).”;

(B) by amending paragraph (2) to read as follows:

“(2) ENFORCEMENT.—An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.”;

(C) in paragraph (4), by striking subparagraphs (C) and (D); and

(D) by striking paragraphs (5) through (10);

(3) by striking subsections (c) through (g); and

(4) by adding at the end the following new subsection (c):

“(c) VICTIM DEFINED.—For purposes of this section, the term ‘victim’ means the individual harmed as a result of a commission of a crime under this chapter, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated,

or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named as such representative or guardian.”.

SEC. 105. PROCEDURE FOR ISSUANCE AND ENFORCEMENT OF RESTITUTION ORDER.

(a) IN GENERAL.—Section 3664 of title 18, United States Code, is amended to read as follows:

“§ 3664. Procedure for issuance and enforcement of order of restitution

“(a) For orders of restitution under this title, the court shall order the probation service of the court to obtain and include in its presentence report, or in a separate report, as the court directs, information sufficient for the court to exercise its discretion in fashioning a restitution order. The report shall include, to the extent practicable, a complete accounting of the losses to each victim, any restitution owed pursuant to a plea agreement, and information relating to the economic circumstances of each defendant.

“(b) The court shall disclose to both the defendant and the attorney for the Government all portions of the presentence or other report pertaining to the matters described in subsection (a) of this section.

“(c) The provisions of this chapter, chapter 227, and Rule 32(c) of the Federal Rules of Criminal Procedure shall be the only rules applicable to proceedings under this section.

“(d)(1) Within 60 days after conviction and, in any event, not later than 10 days prior to sentencing—

“(A)(i) the United States Attorney (or the United States Attorney's delegee), after consulting with all victims, shall prepare and file a statement with the probation service of the court listing the amounts subject to restitution;

“(ii) the statement shall be signed by the United States Attorney (or the United States Attorney's delegee) and the victims; and

“(iii) if any victim objects to any of the information included in the statement, the United States Attorney (or the United States Attorney's delegee) shall advise the victim that the victim may file a separate affidavit and shall provide the victim with an affidavit form which may be used to do so; and

“(B) each defendant shall prepare and file with the probation service of the court an affidavit fully describing the financial resources of the defendant, including a complete listing of all assets owned or controlled by the defendant as of the date on which the defendant was arrested, the financial needs and earning ability of the defendant and the defendant's dependents, and other information the court requires relating to such other factors as the court deems appropriate.

“(2) If the court concludes, after reviewing the report of the probation service of the court and the supporting documentation, that there is a substantial reason for doubting the authenticity or veracity of the records submitted, the court may require additional documentation or hear testimony on those questions. The privacy of any records filed, or testimony heard, pursuant to this section shall be maintained to the greatest extent possible, and such records may be filed or testimony heard in camera.

“(3) If the victim's losses are not ascertainable by the date that is 10 days prior to sentencing as provided in paragraph (1), the United States Attorney (or the United States Attorney's delegee) shall so inform the court, and the court shall set a date for the final determination of the victim's losses, not to exceed 90 days after sentencing. If the victim subsequently discovers further losses, the victim shall have 60 days after discovery of those losses in which to petition the court for an amended restitution order. Such order may be granted only upon a showing of good cause for the failure to include such losses in the initial claim for restitutionary relief.

“(4) The court may refer any issue arising in connection with a proposed order of restitution to a magistrate or special master for proposed findings of fact and recommendations as to disposition, subject to a de novo determination of the issue by the court.

“(e) Any dispute as to the proper amount or type of restitution shall be resolved by the court by the preponderance of the evidence. The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense shall be on the attorney for the Government. The burden of demonstrating the financial resources of the defendant and the financial needs of the defendant and such defendant's dependents shall be on the defendant. The burden of demonstrating such other matters as the court deems appropriate shall be upon the party designated by the court as justice requires.

“(f)(1)(A) In each order of restitution, the court shall order restitution to each victim in the full amount of each victim's losses as determined by the court and without consideration of the economic circumstances of the defendant.

“(B) Subject to subsection (k), subparagraph (A) shall not apply if—

“(i) the court finds from facts on the record that the economic circumstances of the defendant do not allow the payment of any amount of a restitution order, and do not allow for the payment of the full amount of a restitution order in the foreseeable future under any reasonable schedule of payments; and

“(ii) the court enters in its order the full amount of each victim's losses and provides a full restitution award with nominal periodic payments.

“(C) In no case shall the fact that a victim has received or is entitled to receive compensation with respect to a loss from insurance or any other source be considered in determining the amount of restitution.

“(2) Upon determination of the amount of restitution owed to each victim, the court shall, pursuant to section 3572, specify in the restitution order the manner in which and the schedule according to which the restitution is to be paid, in consideration of—

“(A) the financial resources and other assets of the defendant, including whether any of these assets are jointly controlled;

“(B) projected earnings and other income of the defendant; and

“(C) any financial obligations of the defendant; including obligations to dependents.

“(3) A restitution order may direct the defendant to make a single, lump-sum payment, partial payment at specified intervals, in-kind payments, or a combination of payments at specified intervals and in-kind payments.

“(4) An in-kind payment described in paragraph (3) may be in the form of—

“(A) return of property;

“(B) replacement of property; or

“(C) if the victim agrees, services rendered to the victim or a person or organization other than the victim.

“(g)(1) No victim shall be required to participate in any phase of a restitution order. If a victim declines to receive restitution made mandatory by this title, the court shall order that the victim's share of any restitution owed be deposited in the Crime Victims Fund in the Treasury. In the case of in-kind restitution ordered pursuant to subsection (f)(1)(B) or (f)(3), the court shall order that restitution be made to the State crime victim compensation program in the State in which the victim resides.

“(2) A victim may at any time assign the victim's interest in restitution payments to the Crime Victims Fund in the Treasury without in any way impairing the obligation of the defendant to make such payments.

“(h) If the court finds that more than 1 defendant has contributed to the loss of a victim, the court may make each defendant liable for payment of the full amount of restitution or may apportion liability among the defendants to reflect the level of contribution to the victim's loss and economic circumstances of each defendant.

“(i) If the court finds that more than 1 victim has sustained a loss requiring restitution by a defendant, the court may provide for different payment schedules to reflect the economic circumstances of each victim. In any case in which the United States is a victim, the court shall ensure that all individual victims receive full restitution before the United States receives any restitution.

“(j)(1) If a victim has received or is entitled to receive compensation with respect to a loss from insurance or any other source, the court shall order that restitution shall be paid to the person who provided or is obligated to provide the compensation, but the restitution order shall provide that all restitution of victims required by the order be paid to the victims before any restitution is paid to such a provider of compensation.

“(2) Any amount paid to a victim under an order of restitution shall be reduced by any amount later recovered as compensatory damages for the same loss by the victim in—

“(A) any Federal civil proceeding; and

“(B) any State civil proceeding, to the extent provided by the law of the State.

“(k) A restitution order shall provide the following:

“(1) That the entry, collection, and enforcement of an order of restitution shall be governed by the provisions of this section, subchapter C of chapter 227, and subchapter B of chapter 229.

“(2) That the defendant shall notify the court and the Attorney General of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution. The Attorney General shall certify to the court that the victim or victims owed restitution by the defendant have been

notified of the change in circumstances. Upon receipt of the notification, the court may, on its own motion, or the motion of any party, including the victim, adjust the payment schedule, or require immediate payment in full, as the interests of justice require.

“(j)(1) An order of restitution shall be enforced by the United States in the manner provided for in subchapter C of chapter 227 and subchapter B of chapter 229 of this title, and may be enforced by a victim named in the order to receive the restitution, in the same manner as a judgment in a civil action.

“(2) An order of in-kind restitution in the form of services shall be enforced by the probation service of the court.

“(m) If a person obligated to provide restitution receives substantial resources from any source, including inheritance, settlement, or other judgment, during a period of incarceration, such person shall be required to apply the value of such resources to any restitution still owed.”.

(b) TECHNICAL AMENDMENT.—The item relating to section 3664 in the analysis for chapter 232 of title 18, United States Code, is amended to read as follows:

“3664. Procedure for issuance and enforcement of order of restitution.”.

SEC. 106. PROCEDURE.

(a) AMENDMENT OF FEDERAL RULES OF CRIMINAL PROCEDURE.—Rule 32(b) of the Federal Rules of Criminal Procedure is amended—

(1) in paragraph (1), by adding at the end the following: “Notwithstanding the preceding sentence, a presentence investigation and report, or other report containing information sufficient for the court to enter an order of restitution, as the court directs, shall be required in any case in which restitution is required to be ordered.”; and

(2) in paragraph (4)—

(A) by redesignating subparagraphs (F) and (G) as subparagraphs (G) and (H), respectively; and

(B) by inserting after subparagraph (E), the following new subparagraph: “(F) in appropriate cases, information sufficient for the court to enter an order of restitution.”.

(b) FINES.—Section 3572 of title 18, United States Code, is amended—

(1) in subsection (b) by inserting “other than the United States,” after “offense,”;

(2) in subsection (d)—

(A) in the first sentence, by striking “A person sentenced to pay a fine or other monetary penalty” and inserting “(1) A person sentenced to pay a fine or other monetary penalty, including restitution,”;

(B) by striking the third sentence; and

(C) by adding at the end the following:

“(2) If the judgment, or, in the case of a restitution order, the order, permits other than immediate payment, the length of time over which scheduled payments will be made shall be set by the court, but shall be the shortest time in which full payment can reasonably be made.

“(3) A judgment for a fine which permits payments in installments shall include a requirement that the defendant will notify the court of any material change in the defendant’s economic circumstances that might affect the defendant’s ability to pay the fine. Upon receipt of such notice the court may, on its own motion or the motion of any party, adjust the payment schedule, or require immediate payment in full, as the interests of justice require.”;

(3) in subsection (f), by inserting “restitution” after “special assessment.”;

(4) in subsection (h), by inserting “or payment of restitution” after “A fine”; and

(5) in subsection (i)—

(A) in the first sentence, by inserting “or payment of restitution” after “A fine”; and

(B) by amending the second sentence to read as follows: “Notwithstanding any installment schedule, when a fine or payment of restitution is in default, the entire amount of the fine or restitution is due within 30 days after notification of the default, subject to the provisions of section 3616A.”.

(c) POSTSENTENCE ADMINISTRATION.—

(1) PAYMENT OF A FINE OR RESTITUTION.—Section 3611 of title 18, United States Code, is amended—

(A) by amending the heading to read as follows:

“§ 3611. Payment of a fine or restitution”;

(B) by striking “or assessment shall pay the fine or assessment” and inserting “, assessment, or restitution, shall pay the fine, assessment, or restitution”; and

(C) by adding at the end the following: “In the case of restitution, the victim may request that payment be made directly to the victim or the victim’s designee.”.

(2) COLLECTION.—Section 3612 of title 18, United States, is amended—

(A) by amending the heading to read as follows:

“§ 3612. Collection of unpaid fine or restitution”;

(B) in subsection (b)(1)—

(i) in the matter preceding subparagraph (A), by inserting “or restitution order” after “fine”;

(ii) in subparagraph (C), by inserting “or restitution order” after “fine”;

(iii) in subparagraph (E), by striking “and”;

(iv) in subparagraph (F)—

(i) by inserting “or restitution order” after “fine”; and

(ii) by inserting “and” at the end; and

(v) by adding at the end the following new subparagraph:

“(G) in the case of a restitution order, information sufficient to identify each victim to whom restitution is owed. It shall be the responsibility of each victim to notify the Attorney General, by means of a form to be provided by the Attorney General, of any change in the victim’s mailing address while restitution is still owed the victim.”;

(C) in subsection (c)—

(i) in the first sentence, by inserting “or restitution” after “fine”;

(ii) by inserting between the first and second sentences the following: “In the case of restitution, the Attorney General shall ensure that payments are transferred to the victim.”; and

(iii) by adding at the end the following: “Any money received from a defendant shall be disbursed so that each of the following obligations is paid in full in the following sequence:

“(1) A penalty assessment under section 3013 of title 18, United States Code.

“(2) Restitution of all victims.

“(3) All other fines, penalties, costs, and other payments required under the sentence.”;

(D) in subsection (d)—

(i) by inserting “or restitution” after “fine”; and

(ii) by striking “is delinquent, to inform him that the fine is delinquent” and inserting “or restitution is delinquent, to inform the person of the delinquency”;

(E) in subsection (e)—

(i) by inserting “or restitution” after “fine”; and

(ii) by striking “him that the fine is in default” and inserting “the person that the fine or restitution is in default”

(F) in subsection (f)—

(i) in the heading, by inserting “and restitution” after “on fines”; and

(ii) in paragraph (1), by inserting “or restitution” after “any fine”;

(G) in subsection (g), by inserting “or restitution” after “fine” each place it appears; and

(H) in subsection (i), by inserting “and restitution” after “fines”.

(3) CIVIL REMEDIES.—Section 3613 of title 18, United States Code, is amended—

(A) in the heading, by inserting “or restitution” after “fine”;

(B) in subsection (a)—

(i) by striking “A fine” and inserting the following:

“(1) FINES.—A fine”;

(ii) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and indenting accordingly; and

(iii) by adding at the end the following new paragraph:

“(2) RESTITUTION.—(A) An order of restitution shall operate as a lien in favor of the United States and crime victims against all property belonging to the defendant or defendants. The lien shall arise at the time of the entry of judgment or order and shall continue until the liability is satisfied, remitted, or set aside, or until it becomes otherwise unenforceable. Such lien shall apply against all

property and property interests owned by the defendants at the time of arrest as well as all property subsequently acquired by the defendant or defendants.

“(B)(i) In a case in which some or all of the victims are not ascertainable at the time the restitution order is issued, the lien shall be entered in the name of all ascertained victims, if any, and the United States in behalf of the unascertained victims.

“(ii) If the court determines that all victims have been ascertained, no lien interest shall arise in favor of the United States, unless a person entitled to restitution chooses not to participate in the restitution program.

“(iii) In a case in which persons entitled to restitution cannot assert their interests in the lien for any reason, a lien shall arise in favor of the United States acting in behalf of such persons.

“(iv) In any action to enforce a restitution lien in which there is more than one lienholder for the subject property—

“(I) the lienholder seeking to enforce the lien must notify all other lienholders; and

“(II) the court shall make a determination, in the interest of justice, of the equitable distribution of the property subject to the lien.

“(3) JOINTLY HELD PROPERTY.—If property subject to a lien pursuant to this subsection is held jointly by the defendant and a third party or parties, the court shall make a determination, in the interest of justice, as to—

“(A) the enforceability of the lien; and

“(B) the proper distribution of the property.”;

(C) in subsection (b)—

(i) by amending paragraph (1) to read as follows:

“(1) the later of 20 years after the entry of the judgment or 20 years after the release from imprisonment of the person fined or ordered to pay restitution; or”;

(ii) in paragraph (2), by inserting “or ordered to pay restitution” before the period at the end; and

(iii) in the second sentence, by inserting “or ordered to pay restitution” after “person fined”;

(D) in subsection (c)—

(i) by inserting “or restitution” after “to a fine”;

(ii) by inserting “or ordered to pay restitution” after “fined”; and

(iii) by striking “fine” and inserting “fine or restitution”;

(E) in subsection (d), by inserting “or restitution” after “fine”; and

(F) in subsection (e)—

(i) by inserting “or restitution” after “fine”;

(ii) by inserting “or ordered to pay restitution” after “fined”; and

(iii) by striking “but in no event” and all that follows through the end of the subsection and inserting a period.

(4) HEARING.—Chapter 229 of title 18, United States Code, is amended by inserting after section 3613 the following new section:

“§ 3613A. Hearing for delinquency

“(a)(1) When a fine or payment of restitution is 60 or more days delinquent, or in default, the court shall, upon the motion of the United States or of any victim named in the order to receive restitution, schedule a hearing to consider the delinquency or default. Upon a finding that the defendant is 60 or more days delinquent in payment, or in default, of a fine or restitution, the court may, pursuant to section 3565, revoke probation or a term of supervised release or modify the terms or conditions of probation on a term of supervised release, resentence a defendant pursuant to section 3614, hold the defendant in contempt of court, enter a restraining order or injunction, order the sale of property of the defendant, accept a performance bond, enter or adjust a payment schedule, or take any other action necessary to obtain compliance with the order of a fine or restitution.

“(2) In determining what action to take, the court shall consider the defendant’s employment status, earning ability, financial resources, the willfulness in failing to comply with the restitution order, and any other circumstances that may have a bearing on the defendant’s ability to comply with the order of a fine or restitution.

“(b)(1) A hearing under this subsection may be conducted by a magistrate judge, subject to de novo review by the court.

“(2) To the extent practicable, in a hearing under this section involving a defendant who is confined in any jail, prison, or other correctional facility, proceedings in which the prisoner’s participation is required or permitted shall be conducted by telephone, video conference, or other communications technology without removing the prisoner from the facility in which the prisoner is confined.

“(3) Subject to the agreement of the official of the Federal, State, or local unit of government with custody over the prisoner, hearings may be conducted at the facility in which the prisoner is confined. To the extent practicable, the court shall allow counsel to participate by telephone, video conference, or other communications technology in any hearing held at the facility.”.

(5) RESENTENCING.—Section 3614 of title 18, United States Code, is amended—

- (A) in the heading, by inserting “or restitution” after “fine”;
- (B) in subsection (a), by inserting “or restitution” after “fine”;
- (C) by adding at the end the following new subsection:

“(c) EFFECT OF INDIGENCY.—In no event shall a defendant be incarcerated under this section solely on the basis of inability to make payments because the defendant is indigent.”.

(d) CONFORMING AMENDMENT.—The analysis for subchapter B of chapter 229 of title 18, United States Code, is amended to read as follows:

“Sec.
 “3611. Payment of a fine or restitution.
 “3612. Collection of an unpaid fine or restitution.
 “3613. Civil remedies for collection of an unpaid fine or restitution.
 “3613A. Hearing for delinquency.
 “3614. Resentencing upon failure to pay a fine or restitution.
 “3615. Criminal default.”

SEC. 107. JUVENILE DELINQUENCY; DISPOSITIONAL HEARING.

Section 5037 of title 18, United States Code, is amended—

- (1) by redesignating subsection (d) as subsection (e); and
- (2) by inserting immediately after subsection (c), the following new subsection:

“(d) If a juvenile has been adjudicated delinquent for an offense that would have been an offense described in section 3663A, 2248, 2259, or 2264 if the juvenile had been tried and convicted as an adult, the restitution provisions of such sections shall apply.”.

SEC. 108. INSTRUCTION TO SENTENCING COMMISSION.

Pursuant to section 994 of title 28, United States Code, the United States Sentencing Commission shall promulgate guidelines or amend existing guidelines to reflect this Act and the amendments made by this Act.

SEC. 109. JUSTICE DEPARTMENT REGULATIONS.

Not later than 90 days after the date of enactment of this Act, the Attorney General shall promulgate guidelines, or amend existing guidelines, to carry out this Act and to ensure that—

- (1) in all plea agreements negotiated by the United States, consideration is given to requesting that the defendant provide full restitution to all victims of all charges contained in the indictment or information, without regard to the counts to which the defendant actually pleaded; and
- (2) orders of restitution made pursuant to the amendments made by this Act are enforced to the fullest extent of the law.

SEC. 110. SPECIAL ASSESSMENTS ON CONVICTED PERSONS.

Section 3013(a)(2) of title 18, United States Code, is amended—

- (1) in subparagraph (A), by striking “\$50” and inserting “not less than \$100”;
- and
- (2) in subparagraph (B), by striking “\$200” and inserting “not less than \$400”.

SEC. 111. CRIME VICTIMS FUND.

(a) PROHIBITION OF PAYMENTS TO DELINQUENT CRIMINAL DEBTORS BY STATE CRIME VICTIM COMPENSATION PROGRAMS.—

(1) IN GENERAL.—Section 1403(b) of the Victims of Crime Act of 1984 (42 U.S.C. 10602(b)) is amended—

- (A) by striking “and” at the end of paragraph (7);
- (B) by redesignating paragraph (8) as paragraph (9); and
- (C) by inserting after paragraph (7) the following new paragraph:

“(8) such program does not provide compensation to any person who has been convicted of an offense under Federal law with respect to any time period during which the person is delinquent in paying a fine or other monetary penalty imposed for the offense; and”.

(2) APPLICATION OF AMENDMENT.—The amendment made by paragraph (1) shall not be applied to deny victims compensation to any person until the date on which the Attorney General, in consultation with the Director of the Administrative Office of the United States Courts, issues a written determination that

a cost-effective, readily available criminal debt payment tracking system operated by the agency responsible for the collection of criminal debt has established cost-effective, readily available communications links with entities that administer Federal victims compensation programs that are sufficient to ensure that victims compensation is not denied to any person except as authorized by law.

(b) **EXCLUSION FROM INCOME FOR PURPOSES OF MEANS TESTS.**—Section 1403 of the Victims of Crime Act of 1984 (42 U.S.C. 10602) is amended by inserting after subsection (b) the following new subsection:

“(c) **EXCLUSION FROM INCOME FOR PURPOSES OF MEANS TESTS.**—Notwithstanding any other law, for the purpose of any maximum allowed income eligibility requirement in any Federal, State, or local government program using Federal funds that provides medical or other assistance (or payment or reimbursement of the cost of such assistance) that becomes necessary to an applicant for such assistance in full or in part because of the commission of a crime against the applicant, as determined by the Director, any amount of crime victim compensation that the applicant receives through a crime victim compensation program under this section shall not be included in the income of the applicant until the total amount of assistance that the applicant receives from all such programs is sufficient to fully compensate the applicant for losses suffered as a result of the crime.”.

SEC. 112. VICTIMS OF TERRORISM ACT.

(a) **AUTHORITY TO PROVIDE ASSISTANCE AND COMPENSATION TO VICTIMS OF TERRORISM.**—The Victims of Crime Act of 1984 (42 U.S.C. 10601 et seq.) is amended by inserting after section 1404A the following new section:

“SEC. 1404B. COMPENSATION AND ASSISTANCE TO VICTIMS OF TERRORISM OR MASS VIOLENCE.

“(a) **VICTIMS OF ACTS OF TERRORISM OUTSIDE THE UNITED STATES.**—The Director may make supplemental grants to States to provide compensation and assistance to the residents of such States who, while outside the territorial boundaries of the United States, are victims of a terrorist act or mass violence and are not persons eligible for compensation under title VIII of the Omnibus Diplomatic Security and Antiterrorism Act of 1986.

“(b) **VICTIMS OF DOMESTIC TERRORISM.**—The Director may make supplemental grants to States for eligible crime victim compensation and assistance programs to provide emergency relief, including crisis response efforts, assistance, training, and technical assistance, for the benefit of victims of terrorist acts or mass violence occurring within the United States and may provide funding to United States Attorney’s Offices for use in coordination with State victims compensation and assistance efforts in providing emergency relief.”.

(b) **FUNDING OF COMPENSATION AND ASSISTANCE TO VICTIMS OF TERRORISM, MASS VIOLENCE, AND CRIME.**—Section 1402(d)(4) of the Victims of Crime Act of 1984 (42 U.S.C. 10601(d)(4)) is amended to read as follows:

“(4)(A) If the sums available in the Fund are sufficient to fully provide grants to the States pursuant to section 1403(a)(1), the Director may retain any portion of the Fund that was deposited during a fiscal year that was in excess of 110 percent of the total amount deposited in the Fund during the preceding fiscal year as an emergency reserve. Such reserve shall not exceed \$50,000,000.

“(B) The emergency reserve may be used for supplemental grants under section 1404B and to supplement the funds available to provide grants to States for compensation and assistance in accordance with sections 1403 and 1404 in years in which supplemental grants are needed.”.

(c) **CRIME VICTIMS FUND AMENDMENTS.**—

(1) **UNOBLIGATED FUNDS.**—Section 1402 of the Victims of Crime Act of 1984 (42 U.S.C. 10601) is amended—

(A) in subsection (c), by striking “subsection” and inserting “chapter”; and

(B) by amending subsection (e) to read as follows:

“(e) **AMOUNTS AWARDED AND UNSPENT.**—Any amount awarded as part of a grant under this chapter that remains unspent at the end of a fiscal year in which the grant is made may be expended for the purpose for which the grant is made at any time during the 2 succeeding fiscal years, at the end of which period, any remaining unobligated sums shall be returned to the Fund.”.

(2) **BASE AMOUNT.**—Section 1404(a)(5) of such Act (42 U.S.C. 10603(a)(5)) is amended to read as follows:

“(5) As used in this subsection, the term ‘base amount’ means—

“(A) except as provided in subparagraph (B), \$500,000; and

“(B) for the territories of the Northern Mariana Islands, Guam, American Samoa, and Palau, \$200,000.”.

SEC. 113. EFFECTIVE DATE.

The amendments made by this title shall be effective for sentencing proceedings in cases in which the defendant is convicted on or after the date of enactment of this Act.

TITLE II—MISCELLANEOUS PROVISIONS

SEC. 201. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

SEC. 202. STUDY AND REPORT.

(a) **STUDY.**—The Attorney General, in cooperation with the Director of the Administrative Office of the United States Courts, shall conduct a study of the funds paid out of the Crime Victims Fund and the impact that the amendments made by this Act have on funds available in the Crime Victims Fund, including an assessment of any reduction or increase in fines collected and deposited into the Fund directly attributable to the amendments made by this Act.

(b) **REPORT.**—The Attorney General and the Director of the Administrative Office of the United States Courts shall report the findings of the study to the Chairman and ranking Member of the Committees on the Judiciary of the Senate and House of Representatives not later than 4 years after the date of enactment of this Act, together with their recommendations.

I. PURPOSE

The purpose of H.R. 665 is to improve the administration of justice in Federal criminal cases by requiring Federal criminal defendants to pay full restitution to the identifiable victims of their crimes. Crimes for which mandatory restitution would apply include crimes of violence, felony crimes against property (including crimes committed by fraud or deceit), product tampering, and certain drug crimes. Additionally, the bill has the further purposes of establishing one set of procedures for the issuance of restitution orders in Federal criminal cases, and of consolidating the procedures for the collection of unpaid restitution with existing procedures for the collection of unpaid fines, while at the same time strengthening these procedures.

This legislation is needed to ensure that the loss to crime victims is recognized, and that they receive the restitution that they are due. It is also necessary to ensure that the offender realizes the damage caused by the offense and pays the debt owed to the victim as well as to society. Finally, this legislation is needed to replace an existing patchwork of different rules governing orders of restitution under various Federal criminal statutes with one consistent procedure.

II. LEGISLATIVE HISTORY

Congress first enacted a general Federal victim restitution statute in 1982 as a part of the Victim and Witness Protection Act (Public Law 97-291). In reporting this legislation to the full Senate, the Committee on the Judiciary noted:

The principle of restitution is an integral part of virtually every formal system of criminal justice, of every culture and every time. It holds that, whatever else the sanc-

tioning power of society does to punish its wrongdoers, it should also ensure that the wrongdoer is required to the degree possible to restore the victim to his or her prior state of well-being. (S. Rept. 97-532 at 30 (Judiciary Committee), Aug. 19, 1982 (to accompany S. 2420).)

The 1982 act sought to remedy the unfortunate situation noted by the committee that "restitution * * * lost its priority status in the sentencing procedures of our federal courts long ago. * * * As a matter of practice, [restitution] is infrequently used and indifferently enforced." (Id.)

The 1982 act for the first time provided Federal courts with the authority to order payments of restitution independently of a sentence of probation, and required the court to state its reasons for the record in instances in which restitution is not ordered.

The legislation enacted in 1982 was the subject of modest amendments in the years since, but remains substantially intact as enacted 13 years ago. Unfortunately, however, while significant strides have been made since 1982 toward a more victim-centered justice system, much progress remains to be made in the area of victim restitution. According to the 1994 Annual Report of the United States Sentencing Commission, during fiscal year 1994, Federal courts ordered restitution in only 20.2 percent of criminal cases. (United States Sentencing Commission Annual Report 1994, table 22.) Data from the same report show that restitution was ordered in only 27.9 percent of all murders, 28.2 percent of all kidnappings, 55.2 percent of all robberies, and 12.5 percent of all sexual-abuse cases.

Language substantially similar to H.R. 665 has passed the Senate on three previous occasions: as section 2003 of S. 1241 in the 101st Congress, section 2003 of H.R. 3371 in the 101st Congress, and as section 902 of H.R. 3355 in the 103rd Congress. However, this language was never approved in legislation presented to the President.

In 1994, Congress enacted the Violence Against Women Act (VAWA) as title IV of the Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103-322). Included in VAWA were provisions requiring mandatory restitution in Federal cases to victims of sexual abuse, sexual exploitation and other abuse of children, and domestic violence.

As a result of the 1982 act, as amended, and the enactment of VAWA, Federal law now contains parallel victim restitution provisions that are mandatory for some, but not all, offenses and that provide different procedures for the issuance of the restitution order. H.R. 665, which passed the House of Representatives on February 7, 1995, by a vote of 431 to 0, would make restitution mandatory in all Federal criminal cases, but would not address the inconsistencies arising from various congressional enactments since 1982. The committee amendment is intended first, to require that full restitution be ordered to the victims of all covered offenses in which there is an identifiable victim, second, to establish one set of procedures for the issuance of restitution orders in Federal criminal cases, and third, to consolidate the procedures for the collection of unpaid restitution with existing procedures for the collec-

tion of unpaid fines, while at the same time strengthening these procedures.

III. SECTION SUMMARY

Section 1

Short title. Entitles the bill "Victims Justice Act of 1995."

Section 2

Table of contents.

Title I

Restitution.

Section 101.—Order of restitution. Amends sentencing provisions of title 18 to conform with mandatory restitution requirements.

Section 102.—Conditions of probation. Makes compliance with a restitution order, payment of a special assessment, and notification of the court of a material change in a defendant's economic circumstances affecting his or her ability to pay fines, restitution or assessments, mandatory conditions of probation.

Section 103.—Mandatory restitution. Enacts a new section 3663A to title 18, making restitution mandatory for certain federal offenses.

Requires that restitution be made to all identified victims, and to other parties agreed to in any plea agreement.

Restitutable items would include property or its value, medical care and therapy, lost income, funeral expenses, and expenses incurred during participation in investigation and prosecution proceedings.

Covered offenses would include violent crimes, property and fraud crimes under title 18, product tampering, and certain drug crimes. For mandatory restitution to apply, an identifiable victim would have to have suffered a physical injury or pecuniary loss. Additionally, the court could decline to order restitution if the number of identifiable victims is so large as to make restitution impracticable, or if the determination of complex factual issues would place burdens on the sentencing process that outweigh the need for restitution.

Section 104.—Order of restitution to victims of other crimes. Amends other restitution sections in Title 18 to conform them with the new section 3663A and the redrafted section 3664. Amended sections include section 3663 and the mandatory restitution provisions of the Violence Against Women Act (18 U.S.C. sections 2248, 2259, and 2264). No change is made to the scope of restitution required under the Violence Against Women Act provisions, including the availability of emotional damages.

Section 105.—Procedure for issuance and enforcement of restitution order. This section rewrites 18 U.S.C. 3664, to provide one consistent set of procedures for the issuance and enforcement of all orders of restitution in criminal cases. In major part, this section:

provides for compilation and consideration of information on the victims' losses and the defendants' assets sufficient for the court to enter a restitution order;

provides for orders of full restitution to all victims;

provides for a schedule of nominal payments in cases where the defendant's economic circumstances do not presently allow the defendant to pay the full amount of restitution ordered;

specifies that restitution can be ordered in a single lump-sum payment, installment payments, in-kind payments, or a combination of installment payments and in-kind payments;

specifies that victims may not be required to participate in any phase of a restitution order;

gives the court the discretion either to make multiple defendants jointly and severally liable for payment of the full restitution award, or to apportion the restitution order among the various defendants;

provides that if more than one victim has sustained a loss, the court may order different payment schedules with respect to each victim based on various factors, and provides that restitution owed to individual victims shall be paid before restitution owed to the United States;

clarifies that if a victim receives, or is entitled to receive, compensation from some other source (including insurance proceeds), the court must order that, after the victim's losses have been fully satisfied, restitution be paid to the person providing that compensation;

provides that the defendant has the duty to report any material changes in the defendant's economic circumstances that might affect the defendant's ability to pay restitution, and permits the restitution order's payment schedule to be modified on the basis of the changed circumstances;

provides for the enforcement and collection of a restitution order in the same manner as fines under Title 18, and

provides that any substantial resources acquired by an incarcerated defendant owing restitution shall be applied to restitution still owed.

Section 106.—Procedure. Establishes procedures for the collection of restitution orders, and consolidates these procedures with existing procedures for the collection of federal criminal fines. Strengthens the collection provisions for restitution and fines. In major part, this section:

(a) Amends Rule 32(b) of the Federal Rules of Criminal Procedure to require that a presentence report, or other report sufficient to allow the court to formulate a restitution order, be made whenever restitution is to be ordered;

(b) Adds restitution to existing provisions governing the imposition of a fine in federal criminal cases (18 U.S.C. 3572);

allows the courts to give priority to the imposition of fines over orders of restitution only when the United States is the party receiving restitution;

includes restitution in provisions governing payment of fines and monetary penalties, replaces requirement that a payment schedule not exceed 5 years with a requirement that it reflect the shortest time possible, and permits the court to adjust the payment schedule for fines based on changes in the defendant's economic circumstances, similar to the discretion given the court regarding restitution payment schedules in new section 3664(k);

includes restitution in the provisions governing monetary obligations relating to organizations (section 3572(f)), delinquency (section 3572(h)) and default (section 3572(i), and references hearing provisions of new section 3613A in the provisions governing default;

(c) Adds restitution to the provisions governing the post-sentence administration of fines, including collection (18 U.S.C. 3611 *et seq.*), and:

permits the victim to request that restitution be paid directly to the victim or to the victim's designee;

provides that moneys collected from defendants will be applied first to the payment of assessments under 18 U.S.C. 3013, second to restitution to all victims, and third to the payment of any other fines, penalties and costs imposed;

adds authorization for the assessment of interest and penalties on unpaid restitution to existing authority for interest and penalties on unpaid fines;

provides that a restitution order constitutes a lien on the defendants property in favor of the victim (or in favor of the United States in certain circumstances), extends the period of a lien pursuant to a fine or restitution to 20 years after the defendant's release from incarceration, removes the provision which extinguishes the obligation to pay a fine after 20 years, and adds provisions relating to jointly held property to provisions governing liens for the enforcement of fines and restitution;

(d) Adds a new section 3613A to title 18. This new section provides for a hearing on a defendant's delinquency in making or default on payments of fines or restitution, and:

provides courts with a range of remedial options in case of delinquency or default, including revocation or modification of probation or supervised release, resentencing, holding the defendant in contempt of court, ordering the sale of defendant's property, or adjusting the defendant's payment schedule;

provides the court with factors for consideration in determining a remedy, including the defendant's earning ability, financial resources, and willfulness in failing to comply with the fine or restitution order;

allows the hearing to be held by a magistrate judge; and permits on-site hearings or remote hearings via communications technology for any defendant who is incarcerated;

(e) Clarifies that a defendant may not be incarcerated for failure to make fine or restitution payments solely on the basis of indigence.

Section 107.—Juvenile delinquency; dispositional hearing. Requires that an order of restitution be entered in any juvenile delinquency proceeding in which a juvenile is adjudicated delinquent for an offense for which restitution would be mandatory if the juvenile were tried and convicted as an adult.

Section 108.—Instruction to Sentencing Commission. Requires the Sentencing Commission to amend the Sentencing Guidelines to reflect mandatory restitution provisions.

Section 109.—Justice Department guidelines. Requires the Attorney General to amend U.S. attorney guidelines to encourage U.S. attorneys to consider the restitution needs of all an offender's victims when negotiating a plea agreement, and to ensure the full enforcement of restitution orders.

Section 110.—Special assessments on convicted persons. Doubles the special assessments on persons convicted in certain federal cases. This provision has passed the Senate as a part of the Comprehensive Terrorism Prevention Act of 1995 (S. 735).

Section 111.—Crime Victims Fund. Bars crime victim fund payments to Federal convicts delinquent in their fine or restitution payments, and provides that victim assistance is not to be counted as income for the purpose of determining eligibility for Federal benefits.

Section 112.—Victims of Terrorism Act. Authorizes supplemental grants through the States to compensate and assist victims of terrorism and mass violence and makes improvements to the Crime Victims Fund. This provision has also passed the Senate as a part of S. 735.

Section 113.—Effective date. Provides effective dates for the provisions of Title I.

Title II

Severability.

Section 201.—Severability. Provides that, in the event that any of the provisions of the act is found unconstitutional, the remainder of the act remains in force.

Section 202.—Study and report. Requires the Attorney General and the Director of the Administrative Office of the United States Courts to jointly study and report to the Judiciary Committees of the House and Senate on the disbursement of funds paid out of the Crime Victims Fund and on the impact of the amendments made by this act on the Crime Victims Fund.

IV. DISCUSSION

A. IN GENERAL

The economic and personal costs of crime to the American people are enormous. According to the Bureau of Justice Statistics, each year 25 percent of U.S. households are victimized by one or more crimes. Approximately 2 million people in the United States are injured each year as a result of violent crime. Approximately 51 percent of those injured require some level of medical attention, and 23 percent require treatment at a hospital, with an average stay of 9 days.

The true cost to the victims and survivors of crime, particularly violent crime, is incalculable. Even so, where known, the direct costs of crime to its victims are staggering. In 1991, the direct economic costs of personal and household crime was estimated at \$19.1 billion, a figure that does not include the costs associated with homicides or costs attributed to the criminal justice system.

According to recently released data from the Federal Bureau of Investigation, two-thirds of all burglaries in 1994 were perpetrated against a residence, with an average loss of \$1,296. In total, Americans lost \$3.6 billion to burglars in 1994.

Robberies accounted for an estimated \$496 million in losses to victims in 1994. Yet, as with other violent crimes, this figure does not adequately convey the victims' losses. As the FBI cogently stated in its recently released report *Crime in the United States, 1994*, "[t]he impact of this violent crime on its victims cannot be measured in terms of monetary loss alone. * * * [T]he crime always involves force or the threat of force, and many victims suffer serious personal injury."

It is essential that the criminal justice system recognize the impact that crime has on the victim, and, to the extent possible, ensure that offender be held accountable to repay these costs. This is the essence of the committee's intent in favorably reporting the bill H.R. 665, the Victims Justice Act of 1995.

During consideration of this legislation, the committee took testimony from the Federal judiciary on the impact the legislation may have on the criminal justice system. In testimony before the committee, the Chair of the Criminal Law Committee of the Judicial Conference of the United States noted that 85 percent of all Federal defendants are indigent at the time of sentencing, and thus unlikely to be able to pay restitution. According to this testimony, mandatory victim restitution "will not lead to any appreciable increase in compensation to victims of crime."

The committee, while respectful of the Judicial Conference's views, believes that this position underestimates the benefits that even nominal restitution payments have for the victim of crime, as well as the potential penalogical benefits of requiring the offender to be accountable for the harm caused to the victim.

The committee is not unmindful of the costs to the justice system of this legislation. In its amendment to H.R. 665, the Committee has attempted to reduce these costs by limiting mandatory restitution to those Federal offenses in which an identifiable victim suffers physical injury or a pecuniary loss. Additionally, the committee intends that its amendment streamlining the process for issuing and enforcing an order of restitution will have a salutary effect on the costs associated with victim restitution.

B. MANDATORY RESTITUTION—SECTION 103

It is the committee's intent that courts order full restitution to all identifiable victims of covered offenses, while guaranteeing that the sentencing phase of criminal trials do not become fora for the determination of facts and issues better suited to civil proceedings.

To that end, the committee amendment restricts mandatory restitution requirements to criminal cases involving either a crime of violence, as defined in section 16 of title 18, United States Code; a felony against property under title 18, including any felony under title 18 committed by fraud or deceit; a crime involving tampering with consumer products under section 1365 of title 18, and offenses under part D of the Controlled Substances Act (21 U.S.C. 841 et seq.).

Moreover, the committee amendment requires that there be an identifiable victim who suffers a physical injury or pecuniary loss before mandatory restitution provisions would apply. The committee intends this provision to mean, except where a conviction is obtained by a plea bargain, that mandatory restitution provisions apply only in those instances where a named, identifiable victim suffers a physical injury or pecuniary loss directly and proximately caused by the course of conduct under the count or counts for which the offender is convicted.

In the case of a conviction obtained by a plea bargain, it is the committee's intent that, in addition to any restitution mandatory for the offense for which the victim is convicted, all other restitution included in the plea agreement and supported by fact be ordered by the court. The committee recognizes the central role played by plea bargaining in the Federal criminal justice system. Nothing in this act is intended by the committee to impair the fundamental and critical function served by plea bargaining in the administration of justice, or the traditional authority of the court to accept a plea.

In all cases, it is the committee's intent that highly complex issues related to the cause or amount of a victim's loss not be resolved under the provisions of mandatory restitution. The committee believes that losses in which the amount of the victim's losses are speculative, or in which the victim's loss is not clearly causally linked to the offense, should not be subject to mandatory restitution.

Other than offenses under part D of the Controlled Substances Act (21 U.S.C. 841 et seq.), the committee specifically rejects expanding the scope of offenses for which restitution is available beyond those for which it is available under current law. Regulatory or other statutes governing criminal conduct for which restitution is not presently available historically contain their own methods of providing restitution to victims and of establishing systems of sanctions and reparations that the committee believes should be left unaffected by this act.

C. OTHER RESTITUTION—SECTION 104

This section is intended by the committee to conform the mandatory and permissive restitution provisions in current law to the provisions of this act. In particular, the committee intends no change to the scope of restitution authorized by the mandatory restitution provisions of the Violence Against Women Act (title IV of the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103-322, relevant sections codified at 18 U.S.C. 2248, 18 U.S.C. 2259, and 18 U.S.C. 2264).

Moreover, as noted, except to the extent that this act would make restitution mandatory under certain circumstances, the committee intends no change in the range of statutes covered by permissive restitution under 18 U.S.C. 3663.

D. PROCEDURES FOR ISSUANCE AND ENFORCEMENT OF RESTITUTION ORDER—SECTION 105

This section provides one consolidated procedure for the issuance of restitution orders. Under present law, there are different proce-

dures that apply for the issuance of orders under 18 U.S.C. 3663, the basic victim restitution statute, and the mandatory restitution provisions enacted as a part of the Violence Against Women Act (18 U.S.C. 2248, 2259, and 2264). The committee believes that the administration of justice will be better served by providing one set of procedures to govern the issuance of restitution orders in Federal criminal cases.

The procedures contained in this section are intended to provide a streamlined process for the determination of both the amount of restitution owed to each victim and the terms of repayment based on a reasonable interpretation of the defendant's economic circumstances. The committee believes that the need for finality and certainty in the sentencing process dictates that this determination be made quickly, but also recognizes that justice requires that this particular aspect of the criminal sentence be subject to review in the light of changed circumstances. The committee believes that restitution must be considered a part of the criminal sentence, and that justice cannot be considered served until full restitution is made.

This section requires the probation service to assemble, as a part of the presentence investigation process, information sufficient for the court to enter a restitution order. The committee intends that the prosecutor and all victims who have not waived restitution will cooperate in the determination of the victims' losses. The committee also intends that the defendant's affidavit stating the defendant's assets and ability to pay be subject to strict review by the court. In particular, the committee is concerned that defendants not be able to fraudulently transfer assets that might be available for restitution. At the same time, the committee intends that the rights of innocent third parties in assets jointly held with the defendant be protected.

This section also provides that the provisions of rule 32(c) of the Federal Rules of Criminal Procedure and of chapters 227 and 232 of title 18 shall be the only rules applicable to proceedings relating to the issuance of a restitution order. This provision is intended by the committee to clarify that the issuance of a restitution order is an integral part of the sentencing process that is to be governed by the same, but no greater, procedural protections as the rest of the sentencing process.

The committee is concerned that without this clarification, the restitution phase of the sentencing process could devolve into a full-scale evidentiary hearing. The committee believes that such a development would be contrary to the interests of the swift administration of justice.

The committee believes that this provision fully comports with the requirements of the due process clause of the fifth amendment. Although the sentencing phase of a criminal trial is subject to due process requirements, it does not require the same degree of protection as does the guilt determination phase. The sole due process interest of the defendant being protected during the sentencing phase is the right not to be sentenced on the basis of invalid premises or inaccurate information. These interests are adequately protected by the provisions of this act. Moreover, the act also ensures the protection of the victim's right to a fair determination of restitution owed.

The committee believes this provision will ensure the streamlined administration of justice while at the same time protecting the rights of all individuals.

The committee recognizes that a significant number of defendants required to pay restitution under this act will be indigent at the time of sentencing. Moreover, many of these defendants may also be sentenced to prison terms as well, making it unlikely that they will be able to make significant payments on a restitution payment schedule. At the same time, these factors do not obviate the victim's right to restitution or the need that defendants be ordered to pay restitution.

For these reasons, the committee has included in its amendment provisions permitting the court to order full restitution under a schedule of nominal payments in those instances where the defendant cannot pay restitution. The committee recognizes that restitution is an integral part of the criminal sentence that must be complied with. For this reason, the defendant is also required to report material changes in his or her economic circumstances that might affect the ability to pay restitution, and the court is authorized to amend the payment requirements accordingly.

The committee intends that this provision improve the implementation of restitution orders. Should the defendant's economic circumstances change to allow greater restitution payments, these payments should be required. Similarly, if the defendant's economic circumstances change so that the defendant's ability to pay is impaired, the court may adjust the payments accordingly without discharging the defendant's obligation to pay full restitution. In making such adjustments, however, the court should consider the willfulness, if any, of the defendant in avoiding the payment of restitution through changed circumstances.

The committee believes that a clarification is necessary to ensure the proper interpretation of section 3664(j)(2) of the committee substitute. This provision states that "[a]ny amount paid to a victim under an order of restitution shall be reduced by any amount later recovered [by the victim] as compensatory damages for the same loss" in a later Federal civil proceeding or State civil proceeding to the extent provided by State law.

The purpose of this provision, like its predecessor in current law, is to ensure that the victim is not compensated twice for the same loss. The committee believes, however, that clarification is needed regarding the intended meaning of "same loss". It is the intent of the committee that "same loss" refer to a specific loss arising from the same criminal act, not to the criminal act or episode itself in which the loss occurred. For example, if a victim receives restitution for hospitalization resulting from a criminal act, but suffers emotional harm or other losses not included in the restitution order, any later award for civil damages for the injuries not included in the restitution order should not be deemed to reduce the total restitution owed. The committee believes that an order of restitution in a criminal case should in no way impair the ability of the victim to seek or obtain civil damages for losses arising from the same criminal act, but for which restitution is not awarded.

E. PROCEDURE—SECTION 106

This section provides for the postconviction enforcement of restitution orders by amending the provisions of title 18 governing the postconviction enforcement of criminal fines to include restitution orders. The provision also makes changes intended by the committee to strengthen the ability of the Government to collect fines and restitution.

This section removes the provisions in current law that limit the length of time over which the court may schedule fine and restitution payments, and replaces these provisions with a requirement that the payment period be the shortest period in which the debt can reasonably be paid. The committee believes that current limitations on the length of time over which a fine or restitution may be paid needlessly limit the court's discretion in fashioning an order, and may in fact discourage orders of restitution in those instances where a reasonable payment schedule would extend beyond the statutory limit. The committee believes that fines are a part of the criminal sentence, and that restitution is owed the victim without regard to any sentence imposed. The obligation to pay these debts should not expire by the passage of time.

This section also provides for a hearing to consider the delinquency or default of a defendant subject to an order to pay a fine or restitution. The committee recognizes, and seeks to mitigate, the burden repeated enforcement hearings could place on the courts. It is the committee's intent that the availability of progressively harsher penalties for failure to comply with an order of a criminal fine or restitution will provide adequate tools to the court to ensure compliance. The committee also encourages the courts to consider the failure of a defendant to meet a nominal payment schedule to be per se willful for the purpose of imposing sanctions.

This section establishes a priority for the application of payments by a criminal defendant. Under the committee substitute, payments would be applied first to special assessments under section 3013 of title 18, then to the restitution of all victims, and last to the payment of any other fines, penalties, or costs imposed. It is the committee's view that special assessments, which are used to fund victims assistance programs, and restitution, which goes to individual victims, should take precedence over other criminal debts. However, it is also the committee's intent that restitution, fines, and other penalties and assessments not be construed to inhibit the criminal or civil forfeiture of assets. In particular, criminal debts should not be payable out of criminal proceeds otherwise forfeitable, as the committee believes that this would, in effect, permit the defendant to profit from the offense.

F. JUVENILE OFFENSES—SECTION 107

This section provides that juveniles who commit offenses that, were they tried and convicted as an adult would require the mandatory imposition of a restitution order, shall be ordered to pay restitution. It is the view of the committee that the just treatment of victims requires that juvenile offenders who commit adult crimes be required to pay restitution.

G. INSTRUCTION TO SENTENCING COMMISSION—SECTION 108

This provision requires the United States Sentencing Commission to amend the Sentencing Guidelines to conform the Guidelines to the provisions of this act.

H. JUSTICE DEPARTMENT REGULATIONS—SECTION 109

This provision requires the Attorney General to promulgate guidelines for U.S. attorneys to ensure that, in plea agreements negotiated by the United States, consideration is given to requesting the defendant to provide full restitution to all victims of all charges contained in the indictment or information.

H.R. 665, as passed by the House, includes a provision authorizing the courts to order restitution to parties other than the direct victim of the offense. The House provision is intended to provide restitution to victims of so-called dropped or uncharged counts. For example, if a defendant is known to have committed three assaults, but is charged with, or pleads to, only two of these offenses, the House bill would permit the court to order the defendant to pay restitution to the victims of the remaining offense as well.

The committee had grave concerns about the constitutionality of the House provision. It is the committee's view that permitting the court to order restitution for offenses for which the defendant has neither been convicted nor pleaded guilty may violate the due process clause of the fifth amendment.

However, the committee shares the goal underlying the House provision that all an offender's victims receive restitution for their losses. Typically, a victim is powerless to affect the prosecutor's decision whether or how to proceed against a defendant. The committee believes the victim's losses deserve recognition and compensation.

This provision is intended to address this problem by providing guidance to U.S. attorneys to guarantee that the concerns of these victims are considered. The committee is sensitive to the discretion inherent in the prosecutorial function, as well as to the centrality of the plea bargain process to the orderly administration of justice. However, it is the committee's intent that this provision be implemented in a manner that ensures the greatest practicable restitution to crime victims. The committee emphatically believes that the consideration of restitution in a plea agreement should not be the basis for a reduction in charges or a recommendation related to sentencing. It is the committee's view that restitution is due all identifiable victims of the defendant's offenses in addition to any sentence that may lawfully be imposed.

This section also requires the Attorney General to promulgate guidelines to ensure aggressive enforcement of restitution orders. In the view of the committee, orders of restitution are largely worthless without enforcement. The committee recognizes the resource needs of the Department of Justice, and intends that the Department commit the resources necessary to ensure that the rights of victims are enforced.

I. SPECIAL ASSESSMENTS ON CONVICTED PERSONS—SECTION 110

The provisions of this section were suggested by Senator McCain and Senator Leahy, and were initially considered and passed by the Senate as an amendment to the Comprehensive Terrorism Prevention Act, S. 735. This section doubles the amount of special assessments imposed on persons convicted of a felony in Federal court. Under current law, persons convicted of a felony in Federal court are assessed a penalty of \$50 in the case of an individual, and \$200 in the case of a group or corporation, in addition to any other fine or penalty imposed. These assessments partially fund the Crime Victims Fund, from which victim assistance and restitution grants are made to the States. The doubling of the assessments, to \$100 in the case of an individual and \$400 in the case of a group or corporation, will enhance the resources available to assist victims of crime.

J. CRIME VICTIMS FUND—SECTION 111

This section, suggested by Senator McCain, prohibits the payment of federally funded victim assistance to any individual who is delinquent in paying a fine, restitution, or other monetary penalty imposed pursuant to a conviction for a crime in federal court. To ensure that a burden is not imposed on State victim assistance programs, as well as to ensure that no person is wrongfully denied assistance, this prohibition would not take effect until such time as a criminal debt tracking system is in place. The committee does not intend that this act in any way affect the development of the tracking system referenced by this section.

This section also amends the Victims of Crime Act governing the use of victims assistance grants to ensure that crime victims are not penalized for utilizing services available to them. Crime victims may receive funds for medical or other assistance made necessary by crime victimization. Current law permits these funds to be included in the calculation of the victim's income for the purpose of determining eligibility for other victim assistance programs that have maximum income tests for eligibility. Thus, victims can have their eligibility for some programs terminated as a result of their participation in other programs. This section corrects this problem by providing that victims assistance may not be considered income for the purpose of qualifying for other federally funded victim assistance.

K. IMPROVEMENTS TO THE VICTIMS OF CRIME ACT—SECTION 112

These provisions of this section were suggested by Senator Leahy and were initially considered and passed by the Senate as an amendment to the Comprehensive Terrorism Prevention Act, S. 735. This section allows an emergency reserve to be established from increases in the Crime Victims Fund, and authorizes supplemental grants to the States from the emergency reserve for victims of terrorist acts or mass violence both within the United States and outside its territorial boundaries. It improves the Victims of Crime Act by strengthening victims assistance programs, allowing the planning and grant cycle to extend over 3 years, and increasing the base amount for victims assistance grants to the States.

V. COMMITTEE ACTION

A. HEARINGS

The Senate Committee on the Judiciary, with Senator Hatch presiding, convened at 10:10 a.m. on Wednesday, November 8, 1995, to take testimony on the bill H.R. 665. Present were Senators Hatch, Grassley, Kyl, Abraham, Biden, and Feinstein. The committee took testimony from the Honorable Don Nickles, a U.S. Senator from the State of Oklahoma, the Honorable Maryanne Trump Barry, U.S. District Judge for the District of New Jersey and Chair, Committee on Criminal Law, Judicial Conference of the United States, and a panel consisting of David Beatty, director of public policy, National Victim Center, Arlington, VA, and John H. Stein, deputy director and director of public affairs, National Organization for Victim Assistance, Washington, DC.

B. COMMITTEE CONSIDERATION

The Senate Committee on the Judiciary, with a quorum present, met on Thursday, November 16, 1995, at 10 a.m., to mark up H.R. 665. Senator Hatch, on behalf of himself, Senator Biden, and Senator Thurmond, offered a substitute amendment.

The substitute amendment revises the mandatory restitution provisions of the bill, conforms existing mandatory restitution provisions, consolidates procedures for the issuance and enforcement of an order of restitution, adds a requirement of mandatory restitution for certain Federal offenses committed by a juvenile, requires the United States Sentencing Commission to amend the Sentencing Guidelines to reflect mandatory restitution provisions, requires the Attorney General to amend U.S. attorney guidelines to encourage U.S. attorneys to consider the needs of all an offender's victims when negotiating a plea agreement, doubles the special assessment on persons convicted in certain Federal cases, and makes improvements to the Crime Victims Fund.

The substitute amendment was accepted by unanimous consent.

The Committee on the Judiciary then passed H.R. 665, as amended by the substitute amendment, on a rollcall vote of 16 yeas to 1 nay. Senators Hatch, Thurmond, Simpson, Brown, Grassley, Specter, Thompson, Kyl, DeWine, Abraham, Biden, Leahy, Heflin, Kohl, Feinstein, and Feingold voted aye. Senator Simon voted nay.

VI. REGULATORY IMPACT STATEMENT

Pursuant to paragraph 11(b), rule XXVI of the Standing Rules of the Senate, the committee, after due consideration, concludes that House bill 665 will not have direct regulatory impact.

VII. COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 1, 1995.

Hon. ORRIN G. HATCH,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 665, the Victims Justice Act of 1995, as ordered reported by the Senate Committee on the Judiciary on November 16, 1995. We estimate that enacting H.R. 665 would result in increased costs to the federal government, subject to appropriations of the necessary amounts. In addition, the act would result in direct spending and receipts. Therefore, pay-as-you-go procedures would apply to this legislation. The following table summarizes the estimated budgetary impact of H.R. 665.

[By fiscal years, in millions of dollars]

	1996	1997	1998	1999	2000
Changes in Spending Subject to Appropriations:					
Estimated authorization level	25	30	30	30	30
Estimated outlays	23	30	30	30	30
Changes in Revenues:					
Estimated revenues	3	4	4	4	4
Changes in Direct Spending:					
Estimated budget authority	0	4	5	5	5
Estimated outlays	0	3	5	5	5

H.R. 665 would require that, in certain cases, federal courts order defendants to pay restitution to victims. Under current law, orders of restitution are optional. The act would make several other changes to the laws relating to restitution and would make administrative changes to the laws governing the use of the Crime Victims Fund.

Based on information provided by the Administrative Office of the United States Courts, CBO expects that enacting this legislation would result in 10,000 to 20,000 additional orders of restitution annually. Each order of restitution would increase administrative expenditures of the courts and litigation and enforcement costs of the United States Attorneys by about \$2,000. Hence, CBO estimates that discretionary costs for implementing H.R. 665 would eventually total about \$30 million annually, assuming appropriation of the necessary amounts.

Two other provisions of H.R. 665 would have significant federal budgetary impacts. The act would double the special assessment on persons convicted of felonies, from \$50 to \$100 in certain cases and from \$200 to \$400 in others. This provision would increase governmental receipts from assessments. Based on information from the Executive Office of United States Attorneys, we estimate that collections would increase by about \$3 million in fiscal year 1996 and \$4 million in each year thereafter. Assessments would be deposited in the Crime Victims Fund and would be available for spending in the following year.

In addition, one of the act's changes to the Crime Victims Fund would result in direct spending. Under current law, portions of grants awarded from the Crime Victims Fund that remain unobligated at the end of the fiscal year after the year in which the grant was awarded are returned to the general fund of the Treasury. Over the past five years, an average of about \$1 million annually has been returned for this reason. Under H.R. 665, any amounts that remain unobligated at the end of the second fiscal year after the year in which the grant was awarded would remain in the Crime Victims Fund and would be available for obligation. As a result, amounts that would have been returned to the Treasury would instead be spent from the Crime Victims Fund in later years. We estimate that this additional direct spending would be less than \$500,000 in fiscal year 1996 and about \$1 million annually thereafter.

Enacting H.R. 665 would result in no costs to state or local governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Grabowicz, and for governmental receipts, Stephanie Weiner.

Sincerely,

PAUL VAN DE WATER
(For June E. O'Neill, Director).

VIII. ADDITIONAL VIEWS OF SENATOR LEAHY

When the bomb exploded outside the Murrah Federal Building in Oklahoma City earlier this year, my thoughts and prayers, and I suspect that those of all Americans, turned immediately to the victims of this horrendous act. It is my hope that through this substitute we will proceed to enact a series of improvements in our growing body of law recognizing the rights and needs of victims of crime. We can do more to see that victims of crime, including terrorism, are treated with dignity and assisted and compensated with government help.

Section 112 of the substitute incorporates the Victims of Terrorism Act, which will accomplish a number of worthwhile objectives. It includes a proposal I made to increase the availability of assistance to victims of terrorism and mass violence here at home. We in this country have been shielded from much of the terrorism perpetrated abroad. That sense of security has been shaken by the bombing in Oklahoma City, the destruction at the World Trade Center in New York, and recent assaults upon the White House. I, therefore, proposed that we allow additional flexibility in targeting resources to victims of terrorism and mass violence and the trauma and devastation that they cause.

Thus, the substitute includes provisions to make funds available through supplemental grants to the States to assist and compensate our neighbors who are victims of terrorism and mass violence, which incidents might otherwise overwhelm the resources of a State's crime victims compensation program or its victims assistance services. I understand assistance efforts to aid those who were the victims of the Oklahoma City bombing are now \$1 million in debt. These provisions should help.

The substitute will also fill a gap in our law for residents of the United States who are victims of terrorism and mass violence that occur outside the borders of the United States. Those who are not in the military, civil service or civilians in the service of the United States are not eligible for benefits in accordance with the Omnibus Diplomatic Security and Antiterrorism Act of 1986. One of the continuing tragedies of the downing of Pan Am flight 103 over Lockerbie, Scotland, is that the U.S. Government had no authority to provide assistance or compensation to the victims of that heinous crime. Likewise, the U.S. victims of the *Achille Lauro* incident could not be given aid. This was wrong and should be remedied.

In its Report to Congress in 1994, the Office for Victims of Crime at the U.S. Department of Justice identified the problem. Both the ABA and the State Department have commented on their concern and their desire that crime victims compensation benefits be provided to U.S. citizens victimized in other countries. This substitute is an important step in that direction. Certainly U.S. victims of terrorism overseas are deserving of our support and assistance.

In addition, I believe that we must allow a greater measure of flexibility to our State and local victims' assistance programs and some greater certainty so that they can know that our commitment to victims programming will not wax and wane with events. Accordingly, the substitute includes an important provision to increase the base amounts for States' victims assistance grants to \$500,000 and allows victims assistance grants to be made for a 3-year cycle of programming, rather than the year of award plus one, which is the limit contained in current law. This programming change reflects the recommendation of the Office for Victims of Crime contained in its June 1994 Report to Congress.

Our State and local communities and community-based non-profits cannot be kept on a string like a yo-yo if they are to plan and implement victims assistance and compensation programs. They need to be able to plan and hire and have a sense of stability if these measures are to achieve their fullest potential.

I know, for instance, that in Vermont Lori Hayes at the Vermont Center for Crime Victims Services, Judy Rex at the Vermont Network Against Domestic Violence and Sexual Abuse, and many others provide tremendous service under difficult conditions. They will be able to put increased annual assistance grants to good use. Such dedicated individuals and organizations will also be aided by increasing their programming cycle by even one year. Three years has been a standard that has worked well in other programming settings. Crime victims' programming deserves no less security.

Finally, in 1984 when we established the Crime Victims Fund to provide Federal assistance to State and local victims compensation and assistance efforts, we funded it with fines and penalties from those convicted of Federal crime. The level of required contribution was set low. Ten years have passed and it is time to raise that level of assessment in order to fund the needs of crime victims. Accordingly, the substitute includes as section 110 a provision doubling the special assessments levied under the Victims of Crime Act against those convicted of federal felonies in order to assist all victims of crime.

I do not think that \$100 to assist crime victims is too much for those individuals convicted of a Federal felony to contribute to help crime victims. I do not think that \$400 is too much to insist that corporations convicted of a Federal felony contribute. Accordingly, the substitute would raise these to be the minimum level of assessment against those convicted of crime.

While we have made progress over the last 15 years in recognizing crime victims' rights and providing much-needed assistance, we still have more to do. I am proud to have played a role in passage of the Victims and Witness Protection Act of 1982, the Victims of Crime Act of 1984, the Victims' Rights and Restitution Act of 1990 and the victims provisions included in such measures as the Violent Crime Control and Law Enforcement Act of 1994. I look forward to prompt consideration and Senate passage of this substitute, including the Victims of Terrorism Act.

PATRICK LEAHY.

IX. MINORITY VIEWS OF SENATOR SIMON

Victim restitution is an important part of our criminal justice system. It can help make the victim of a crime “whole”, while holding the offender accountable for the damage caused by his or her crime. While I certainly applaud the good intentions of its sponsors, I do not support this “mandatory victim restitution” proposal. This bill would replace the current system, which allows judges to order victim restitution in certain types of cases, with an inflexible mandate which requires restitution be ordered in such cases.

In general, I do not support placing mandates on judges. I oppose mandatory minimum sentences because they substitute inflexible formulas, which cannot account for individual circumstances, for judicial discretion. Similarly, the “mandatory victim restitution” proposal will require judges to order restitution in cases where they know it can never be paid. The Judicial Conference of the United States reports that 85 percent of criminal defendants are indigent at the time of their conviction. And yet, according to the U.S. Sentencing Commission’s 1994 Annual Report, judges order a fine or restitution in 37.7 percent of cases sentenced under the guidelines. These statistics lead me to believe that Federal judges are already doing a good job of ordering restitution when practicable.

I respect the motives of this proposal’s sponsors, and agree that we must do all that is practicable to help victims of crime. However, rather than placing another mandate on judges, which seems unlikely to increase the amount of restitution actually paid to victims, we should instead consider alternative *permissive* forms of restitution which would enhance the current system. My colleagues, Senators Kyl and Feinstein, have proposed an amendment which would allow judges to order those convicted of drug trafficking offenses where there is no identifiable victim to pay restitution to the affected community or to a drug treatment organizations. I would support such a proposal, and other similar measures, within a permissive system.

PAUL SIMON.

X. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by H.R. 665, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italic; existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

* * * * *

Title 18—Crimes and Criminal Procedure

* * * * *

CHAPTER 109A.—SEXUAL ABUSE

* * * * *

§ 2248. Mandatory restitution

(a) IN GENERAL.—Notwithstanding section 3663 *or* 3663A, and in addition to any other civil or criminal penalty authorized by law, the court shall order restitution for any offense under this chapter.

(b) SCOPE AND NATURE OF ORDER.—

[(1) DIRECTIONS.—The order of restitution under this section shall direct that—

[(A) the defendant pay to the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court, pursuant to paragraph (3); and

[(B) the United States Attorney enforce the restitution order by all available and reasonable means.]

(1) DIRECTIONS.—*The order of restitution under this section shall direct the defendant to pay to the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court pursuant to paragraph (2).*

[(2) ENFORCEMENT BY VICTIM.—An order of restitution also may be enforced by a victim named in the order to receive the restitution in the same manner as a judgment in a civil action.]

(2) ENFORCEMENT.—*An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.*

* * * * *

(4) ORDER MANDATORY.—(A) The issuance of a restitution order under this section is mandatory.

(B) A court may not decline to issue an order under this section because of—

(i) the economic circumstances of the defendant; or

(ii) the fact that a victim has, or is entitled to, receive compensation for his or her injuries from the proceeds of insurance or any other source.

[(C)(i) Notwithstanding subparagraph (A), the court may take into account the economic circumstances of the defendant in determining the manner in which and the schedule according to which the restitution is to be paid.

[(ii) For purposes of this subparagraph, the term “economic circumstances” includes—

[(I) the financial resources and other assets of the defendant;

[(II) projected earnings, earning capacity, and other income of the defendant; and

[(III) any financial obligations of the defendant, including obligations to dependents.

[(D) Subparagraph (A) does not apply if—

[(i) the court finds on the record that the economic circumstances of the defendant do not allow for the payment of any amount of a restitution order, and do not allow for the payment of any or some portion of the amount of a restitution order in the foreseeable future (under any reasonable schedule of payments); and

[(ii) the court enters in its order the amount of the victim’s losses, and provides a nominal restitution award.

[(5) MORE THAN 1 OFFENDER.—When the court finds that more than 1 offender has contributed to the loss of a victim, the court may make each offender liable for payment of the full amount of restitution or may apportion liability among the offenders to reflect the level of contribution and economic circumstances of each offender.

[(6) MORE THAN 1 VICTIM.—When the court finds that more than 1 victim has sustained a loss requiring restitution by an offender, the court shall order full restitution of each victim but may provide for different payment schedules to reflect the economic circumstances of each victim.

[(7) PAYMENT SCHEDULE.—An order under this section may direct the defendant to make a single lump-sum payment or partial payments at specified intervals.

[(8) SETOFF.—Any amount paid to a victim under this section shall be set off against any amount later recovered as compensatory damages by the victim from the defendant in—

[(A) any Federal civil proceeding; and

[(B) any State civil proceeding, to the extent provided by the law of the State.

[(9) EFFECT ON OTHER SOURCES OF COMPENSATION.—The issuance of a restitution order shall not affect the entitlement of a victim to receive compensation with respect to a loss from insurance or any other source until the payments actually received by the victim under the restitution order fully compensate the victim for the loss.

[(10) CONDITION OF PROBATION OR SUPERVISED RELEASE.— Compliance with a restitution order issued under this section shall be a condition of any probation or supervised release of a defendant. If an offender fails to comply with a restitution order, the court may, after a hearing, revoke probation or a term of supervised release, modify the terms or conditions of probation or a term of supervised release, or hold the defendant in contempt pursuant to section 3583(e). In determining whether to revoke probation or a term of supervised release, modify the terms or conditions of probation or supervised release or hold a defendant serving a term of supervised release in contempt, the court shall consider the defendant's employment status, earning ability and financial resources, the willfulness of the defendant's failure to comply, and any other circumstances that may have a bearing on the defendant's ability to comply.

[(c) PROOF OF CLAIM.—

[(1) AFFIDAVIT.—Within 60 days after conviction and, in any event, not later than 10 days prior to sentencing, the United States Attorney (or the United States Attorney's delegee), after consulting with the victim, shall prepare and file an affidavit with the court listing the amounts subject to restitution under this section. The affidavit shall be signed by the United States Attorney (or the United States Attorney's delegee) and the victim. Should the victim object to any of the information included in the affidavit, the United States Attorney (or the United States Attorney's delegee) shall advise the victim that the victim may file a separate affidavit and shall provide the victim with an affidavit form which may be used to do so.

[(2) OBJECTION.—If, after the defendant has been notified of the affidavit, no objection is raised by the defendant, the amounts attested to in the affidavit filed pursuant to paragraph (1) shall be entered in the court's restitution order. If objection is raised, the court may require the victim or the United States Attorney (or the United States Attorney's delegee) to submit further affidavits or other supporting documents, demonstrating the victim's losses.

[(3) ADDITIONAL DOCUMENTATION AND TESTIMONY.—If the court concludes, after reviewing the supporting documentation and considering the defendant's objections, that there is a substantial reason for doubting the authenticity or veracity of the records submitted, the court may require additional documentation or hear testimony on those questions. The privacy of any records filed, or testimony heard, pursuant to this section shall be maintained to the greatest extent possible, and such records may be filed or testimony heard in camera.

[(4) FINAL DETERMINATION OF LOSSES.—If the victim's losses are not ascertainable by the date that is 10 days prior to sentencing as provided in paragraph (1), the United States Attorney (or the United States Attorney's delegee) shall so inform the court, and the court shall set a date for the final determination of the victim's losses, not to exceed 90 days after sentencing. If the victim subsequently discovers further losses, the victim shall have 60 days after discovery of those losses in

which to petition the court for an amended restitution order. Such order may be granted only upon a showing of good cause for the failure to include such losses in the initial claim for restitutionary relief.

[(d) MODIFICATION OF ORDER.—A victim or the offender may petition the court at any time to modify a restitution order as appropriate in view of a change in the economic circumstances of the offender.]

[(e) REFERENCE TO MAGISTRATE OR SPECIAL MASTER.—The court may refer any issue arising in connection with a proposed order of restitution to a magistrate or special master for proposed findings of fact and recommendations as to disposition, subject to a de novo determination of the issue by the court.]

[(f)] (c) DEFINITION.—For purposes of this section, the term victim means the individual harmed as a result of a commission of a crime under this chapter, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named as such representative or guardian.

* * * * *

CHAPTER 110—SEXUAL EXPLOITATION AND OTHER ABUSE OF CHILDREN

* * * * *

§ 2259. Mandatory restitution

(a) IN GENERAL.—Notwithstanding section 3663 or 3663A, and in addition to any other civil or criminal penalty authorized by law, the court shall order restitution for any offense under this chapter.

(b) SCOPE AND NATURE OF ORDER.—

[(1) DIRECTIONS.—The order of restitution under this section shall direct that—

[(A) the defendant pay to the victim (though the appropriate court mechanism) the full amount of victim's losses as determined by the court, pursuant to paragraph (3); and

[(B) the United States Attorney enforce the restitution order by all available and reasonable means.]

(1) DIRECTIONS.—*The order of restitution under this section shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court pursuant to paragraph (2).*

[(2) ENFORCEMENT BY VICTIM.—An order of restitution may also be enforced by a victim named in the order to receive the restitution in the same manner as a judgment in a civil action.]

(2) ENFORCEMENT.—*An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.*

* * * * *

(4) ORDER MANDATORY.—(A) The issuance of a restitution order under this section is mandatory.

(B) A court may not decline to issue an order under this section because of—

(i) the economic circumstances of the defendant; or

(ii) the fact that a victim has, or is entitled to, receive compensation for his or her injuries from the proceeds of insurance or any other source.

[(C)(i) Notwithstanding subparagraph (A), the court may take into account the economic circumstances of the defendant in determining the manner in which and the schedule according to which the restitution is to be paid.

[(ii) For purposes of this subparagraph, the term “economic circumstances” includes—

[(I) the financial resources and other assets of the defendant;

[(II) project earnings, earning capacity, and other income of the defendant; and

[(III) any financial obligations of the defendant, including obligations to dependents.

[(D) Subparagraph (A) does not apply if—

[(i) the court finds on the record that the economic circumstances of the defendant do not allow for the payment of any amount of a restitution order, and do not allow for the payment of any or some portion of the amount of a restitution order in the foreseeable future (under any reasonable schedule of payments); and

[(ii) the court enters in its order the amount of the victim's losses, and provides a nominal restitution award.

[(5) MORE THAN 1 OFFENDER.—When the court finds that more than 1 offender has contributed to the loss of a victim, the court may make each offender liable for payment of the full amount of restitution or may apportion liability among the offenders to reflect the level of contribution and economic circumstances of each offender.

[(6) MORE THAN 1 VICTIM.—When the court finds that more than 1 victim has sustained a loss requiring restitution by an offender, the court shall order full restitution of each victim but may provide for different payment schedules to reflect the economic circumstances of each victim.

[(7) PAYMENT SCHEDULE.—An order under this section may direct the defendant to make a single lump-sum payment or partial payments at specified intervals.

[(8) SETOFF.—Any amount paid to a victim under this section shall be set off against any amount later recovered as compensatory damages by the victim from the defendant in—

[(A) any Federal civil proceeding; and

[(B) any State civil proceeding, to the extent provided by the law of the State.

[(9) EFFECT ON OTHER SOURCES OF COMPENSATION.—The issuance of a restitution order shall not affect the entitlement of a victim to receive compensation with respect to a loss from insurance or any other source until the payments actually received by the victim under the restitution order fully compensate the victim for the loss.

[(10) CONDITION OF PROBATION OR SUPERVISED RELEASE.— Compliance with a restitution order issued under this section shall be a condition of any probation or supervised release of a defendant. If an offender fails to comply with a restitution order, the court may, after a hearing, revoke probation or a term of supervised release, modify the terms or conditions of probation or a term of supervised release, or hold the defendant in contempt pursuant to section 3583(e). In determining whether to revoke probation or a term of supervised release, modify the terms or conditions of probation or supervised release or hold a defendant serving a term of supervised release in contempt, the court shall consider the defendant's employment status, earning ability and financial resources, the willfulness of the defendant's failure to comply, and any other circumstances that may have a bearing on the defendant's ability to comply.

[(c) PROOF OF CLAIM.—

[(1) AFFIDAVIT.—Within 60 days after conviction and, in any event, not later than 10 days prior to sentencing, the United States Attorney (or the United States Attorney's delegee), after consulting with the victim, shall prepare and file an affidavit with the court listing the amounts subject to restitution under this section. The affidavit shall be signed by the United States Attorney (or the United States Attorney's delegee) and the victim. Should the victim object to any of the information included in the affidavit, the United States Attorney (or the United States Attorney's delegee) shall advise the victim that the victim may file a separate affidavit and shall provide the victim with an affidavit form which may be used to do so.

[(2) OBJECTION.—If, after the defendant has been notified of the affidavit, no objection is raised by the defendant, the amounts attested to in the affidavit filed pursuant to paragraph (1) shall be entered in the court's restitution order. If objection is raised, the court may require the victim or the United States Attorney (or the United States Attorney's delegee) to submit further affidavits or other supporting documents, demonstrating the victim's losses.

[(3) ADDITIONAL DOCUMENTATION AND TESTIMONY.—If the court concludes, after reviewing the supporting documentation and considering the defendant's objections, that there is a substantial reason for doubting the authenticity or veracity of the records submitted, the court may require additional documentation or hear testimony on those questions. The privacy of any records filed, or testimony heard, pursuant to this section shall be maintained to the greatest extent possible, and such records may be filed or testimony heard in camera.

[(4) FINAL DETERMINATION OF LOSSES.—If the victim's losses are not ascertainable by the date that is 10 days prior to sentencing as provided in paragraph (1), the United States Attorney (or the United States Attorney's delegee) shall so inform the court, and the court shall set a date for the final determination of the victim's losses, not to exceed 90 days after sentencing. If the victim subsequently discovers further losses, the victim shall have 60 days after discovery of those losses in

which to petition the court for an amended restitution order. Such order may be granted only upon a showing of good cause for the failure to include such losses in the initial claim for restitutionary relief.

[(d) MODIFICATION OF ORDER.—A victim or the offender may petition the court at any time to modify a restitution order as appropriate in view of a change in the economic circumstances of the offender.]

[(e) REFERENCE TO MAGISTRATE OR SPECIAL MASTER.—The court may refer any issue arising in connection with a proposed order of restitution to a magistrate or special master for proposed findings of fact and recommendations as to disposition, subject to a de novo determination of the issue by the court.]

[(f)] (e) DEFINITION.—For purposes of this section, the term “victim” means the individual harmed as a result of a commission of a crime under this chapter, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim’s estate, another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named as such representative or guardian.

* * * * *

CHAPTER 110A—DOMESTIC VIOLENCE

* * * * *

§ 2264. Restitution

(a) IN GENERAL.—Notwithstanding section 3663 or 3663A, and in addition to any other civil or criminal penalty authorized by law, the court shall order restitution for any offense under this chapter.

(b) SCOPE AND NATURE OF ORDER.—

[(1) DIRECTIONS.—The order of restitution under this section shall direct that—

[(A) the defendant pay to the victim (through the appropriate court mechanism) the full amount of the victim’s losses as determined by the court, pursuant to paragraph (3); and

[(B) the United States Attorney enforce the restitution order by all available and reasonable means.]

(1) DIRECTIONS.—*The order of restitution under this section shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim’s losses as determined by the court pursuant to paragraph (2).*

[(2) ENFORCEMENT BY VICTIM.—An order of restitution also may be enforced by a victim named in the order to receive the restitution in the same manner as a judgment in a civil action.]

(2) ENFORCEMENT.—*An order of restitution under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A.*

* * * * *

(4) ORDER MANDATORY.—(A) The issuance of a restitution order under this section is mandatory.

(B) A court may not decline to issue an order under this section because of—

(i) the economic circumstances of the defendant; or

(ii) the fact that a victim has, or is entitled to, receive compensation for his or her injuries from the proceeds of insurance or any other source.

[(C)(i) Notwithstanding subparagraph (A), the court may take into account the economic circumstances of the defendant in determining the manner in which and the schedule according to which the restitution is to be paid.

[(ii) For purposes of this subparagraph, the term “economic circumstances” includes—

[(I) the financial resources and other assets of the defendant;

[(II) projected earnings, earning capacity, and other income of the defendant; and

[(III) any financial obligations of the defendant, including obligations to dependents.

[(D) Subparagraph (A) does not apply if—

[(i) the court finds on the record that the economic circumstances of the defendant do not allow for the payment of any amount of a restitution order, and do not allow for the payment of any or some portion of the amount of a restitution order in the foreseeable future (under any reasonable schedule of payments); and

[(ii) the court enters in its order the amount of the victim’s losses, and provides a nominal restitution award.

[(5) MORE THAN 1 OFFENDER.—When the court finds that more than 1 offender has contributed to the loss of a victim, the court may make each offender liable for payment of the full amount of restitution or may apportion liability among the offenders to reflect the level of contribution and economic circumstances of each offender.

[(6) MORE THAN 1 VICTIM.—When the court finds that more than 1 victim has sustained a loss requiring restitution by an offender, the court shall order full restitution of each victim but may provide for different payment schedules to reflect the economic circumstances of each victim.

[(7) PAYMENT SCHEDULE.—An order under this section may direct the defendant to make a single lump-sum payment or partial payments at specified intervals.

[(8) SETOFF.—Any amount paid to a victim under this section shall be set off against any amount later recovered as compensatory damages by the victim from the defendant in—

[(A) any Federal civil proceeding; and

[(B) any State civil proceeding, to the extent provided by the law of the State.

[(9) EFFECT ON OTHER SOURCES OF COMPENSATION.—The issuance of a restitution order shall not affect the entitlement of a victim to receive compensation with respect to a loss from insurance or any other source until the payments actually received by the victim under the restitution order fully compensate the victim for the loss.

[(10) CONDITION OF PROBATION OR SUPERVISED RELEASE.—Compliance with a restitution order issued under this section shall be a condition of any probation or supervised release of a defendant. If an offender fails to comply with a restitution order, the court may, after a hearing, revoke probation or a term of supervised release, modify the terms or conditions of probation or a term of supervised release, or hold the defendant in contempt pursuant to section 3583(e). In determining whether to revoke probation or a term of supervised release, modify the terms or conditions of probation or supervised release or hold a defendant serving a term of supervised release in contempt, the court shall consider the defendant's employment status, earning ability and financial resources, the willfulness of the defendant's failure to comply, and any other circumstances that may have a bearing on the defendant's ability to comply.

[(c) AFFIDAVIT.—Within 60 days after conviction and, in any event, not later than 10 days before sentencing, the United States Attorney (or such Attorney's delegate), after consulting with the victim, shall prepare and file an affidavit with the court listing the amounts subject to restitution under this section. The affidavit shall be signed by the United States Attorney (or the delegate) and the victim. Should the victim object to any of the information included in the affidavit, the United States Attorney (or the delegate) shall advise the victim that the victim may file a separate affidavit and assist the victim in the preparation of the affidavit.

[(d) OBJECTION.—If, after the defendant has been notified of the affidavit, no objection is raised by the defendant, the amounts attested to in the affidavit filed pursuant to subsection (a) shall be entered in the court's restitution order. If objection is raised, the court may require the victim or the United States Attorney (or the United States Attorney's delegate) to submit further affidavits or other supporting documents, demonstrating the victim's losses.

[(e) ADDITIONAL DOCUMENTATION AND TESTIMONY.—If the court concludes, after reviewing the supporting documentation and considering the defendant's objections, that there is a substantial reason for doubting the authenticity or veracity of the records submitted, the court may require additional documentation or hear testimony on those questions. The privacy of any records filed, or testimony heard, pursuant to this section, shall be maintained to the greatest extent possible, and such records may be filed or testimony heard in camera.

[(f) FINAL DETERMINATION OF LOSSES.—If the victim's losses are not ascertainable 10 days before sentencing as provided in subsection (c), the United States Attorney (or the United States Attorney's delegate) shall so inform the court, and the court shall set a date for the final determination of the victim's losses, not to exceed 90 days after sentencing. If the victim subsequently discovers further losses, the victim shall have 90 days after discovery of those losses in which to petition the court for an amended restitution order. Such order may be granted only upon a showing of good cause for the failure to include such losses in the initial claim for restitutionary relief.

[(g) RESTITUTION IN ADDITION TO PUNISHMENT.—An award of restitution to the victim of an offense under this chapter is not a substitute for imposition of punishment under this chapter.]

(c) VICTIM DEFINED.—For purposes of this section, the term “victim” means the individual harmed as a result of a commission of a crime under this chapter, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim’s estate, another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named as such representative or guardian.

* * * * *

CHAPTER 201—GENERAL PROVISIONS

* * * * *

§ 3013. Special assessment on convicted persons

(a) The court shall assess on any person convicted of an offense against the United States—

(1) in the case of an infraction or a misdemeanor—

* * * * *

(2) in the case of a felony—

(A) the amount of **[\$50]** *not less than \$100* if the defendant is an individual; and

(B) the amount of **[\$200]** *not less than \$400* if the defendant is a person other than an individual.

* * * * *

CHAPTER 227—SENTENCES

* * * * *

§ 3556. Order of restitution

The court, in imposing a sentence on a defendant who has been found guilty of an offense **[may]** *shall* order restitution in accordance with **[sections 3663 and 3664.]** *3663A, and may order restitution in accordance with section 3663. The procedures under section 3664 shall apply to all orders of restitution under this section.*

§ 3563. Conditions of probation

(a) **MANDATORY CONDITIONS.—**The court shall provide, as an explicit condition of a sentence of probation—

(1) for a felony, a misdemeanor, or an infraction, that the defendant not commit another Federal, State, or local crime during the term of probation;

* * * * *

(3) for a felony, a misdemeanor, or an infraction, that the defendant not unlawfully possess a controlled substance; **[and]**

(4) for a domestic violence crime as defined in section 3561(b) by a defendant convicted of such an offense for the first time that the defendant attend a public, private, or private non-profit offender rehabilitation program that has been approved

by the court, in consultation with a State Coalition Against Domestic Violence or other appropriate experts, if an approved program is readily available within a 50-mile radius of the legal residence of the defendant[.];

[(4)] (5) for a felony, a misdemeanor, or an infraction, that the defendant refrain from any unlawful use of a controlled substance and submit to one drug test within 15 days of release on probation and at least 2 periodic drug tests thereafter (as determined by the court) for use of a controlled substance, but the condition stated in this paragraph may be ameliorated or suspended by the court for any individual defendant if the defendant's presentence report or other reliable sentencing information indicates a low risk of future substance abuse by the defendant[.];

(6) that the defendant—

(A) make restitution in accordance with sections 2248, 2259, 2264, 3663, 3663A, and 3664;

(B) pay the assessment imposed in accordance with section 3013; and

(7) that the defendant will notify the court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution, fines, or special assessments.

* * * * *

(b) DISCRETIONARY CONDITIONS.—The court may provide, as further conditions of a sentence of probation, to the extent that such conditions are reasonably related to the factors set forth in section 3553(a)(1) and (a)(2) and to the extent that such conditions involve only such deprivations of liberty or property as are reasonably necessary for the purposes indicated in section 3553(a)(2), that the defendant—

(1) support his dependents and meet other family responsibilities;

[(2)] pay a fine imposed pursuant to the provisions of subchapter C;

[(3)] make restitution to a victim of the offense under sections 3663 and 3664 (but not subject to the limitations of section 3663(a));

[(4)] (2) give to the victims of the offense the notice ordered pursuant to the provisions of section 3555;

[(5)] (3) work conscientiously at suitable employment or pursue conscientiously a course of study or vocational training that will equip him for suitable employment;

[(6)] (4) refrain, in the case of an individual, from engaging in a specified occupation, business, or profession bearing a reasonably direct relationship to the conduct constituting the offense, or engage in such a specified occupation, business, or profession only to a stated degree or under stated circumstances;

[(7)] (5) refrain from frequenting specified kinds of places or from associating unnecessarily with specified persons;

[(8)] (6) refrain from excessive use of alcohol, or any use of a narcotic drug or other controlled substance, as defined in sec-

tion 102 of the Controlled Substances act (21 U.S.C. 802), without a prescription by a licensed medical practitioner;

[(9)] (7) refrain from possessing a firearm, destructive device, or other dangerous weapon;

[(10)] (8) undergo available medical, psychiatric, or psychological treatment, including treatment for drug or alcohol dependency, as specified by the court, and remain in a specified institution if required for that purpose;

[(11)] (9) remain in the custody of the Bureau of Prisons during nights, weekends, or other intervals of time, totaling no more than the lesser of one year or the term of imprisonment authorized for the offense, during the first year of the term of probation;

[(12)] (10) reside at, or participate in the program of, a community corrections facility (including a facility maintained or under contract to the Bureau of Prisons) for all or part of the term of probation;

[(13)] (11) work in community service as directed by the court;

[(14)] (12) reside in a specified place or area, or refrain from residing in a specified place or area;

[(15)] (13) remain within the jurisdiction of the court, unless granted permission to leave by the court or a probation officer;

[(16)] (14) report to a probation officer as directed by the court or the probation officer;

[(17)] (15) permit a probation officer to visit him at his home or elsewhere as specified by the court;

[(18)] (16) answer inquiries by a probation officer and notify the probation officer promptly of any change in address or employment;

[(19)] (17) notify the probation officer promptly if arrested or questioned by a law enforcement officer;

[(20)] (18) remain at his place of residence during non-working hours and, if the court finds it appropriate, that compliance with this condition be monitored by telephonic or electronic signaling devices, except that a condition under this paragraph may be imposed only as an alternative to incarceration;

[(21)] (19) comply with the terms of any court order or order of an administrative process pursuant to the law of a State, the District of Columbia, or any other possession or territory of the United States, requiring payments by the defendant for the support and maintenance of a child or of a child and the parent with whom the child is living; or

[(22)] (20) satisfy such other conditions as the court may impose.

* * * * *

§ 3572. Imposition of a sentence of fine and related matters

(a) **FACTORS TO BE CONSIDERED.**—In determining whether to impose a fine, and the amount, time for payment, and method of payment of a fine, the court shall consider, in addition to the factors set forth in section 3553(a)—

(1) the defendant's income, earning capacity, and financial resources;

* * * * *

(b) FINE NOT TO IMPAIR ABILITY TO MAKE RESTITUTION.—If, as a result of a conviction, the defendant has the obligation to make restitution to a victim of the offense, *other than the United States*, the court shall impose a fine or other monetary penalty only to the extent that such fine or penalty will not impair the ability of the defendant to make restitution.

* * * * *

(d) TIME, METHOD OF PAYMENT, AND RELATED ITEMS.—[A person sentenced to pay a fine or other monetary penalty] (1) *A person sentenced to pay a fine or other monetary penalty, including restitution*, shall make such payment immediately, unless, in the interest of justice, the court provides for payment on a date certain or in installments. If the court provides for payment in installments, the installments shall be in equal monthly payments over the period provided by the court, unless the court establishes another schedule. [If the judgment permits other than immediate payment, the period provided for shall not exceed five years, excluding any period served by the defendant as imprisonment for the offense.]

(2) *If the judgment, or, in the case of a restitution order, the order, permits other than immediate payment, the length of time over which scheduled payments will be made shall be set by the court, but shall be the shortest time in which full payment can reasonably be made.*

(3) *A judgment for a fine which permits payments in installments shall include a requirement that the defendant will notify the court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay the fine. Upon receipt of such notice the court may, on its own motion or the motion of any party, adjust the payment schedule, or require immediate payment in full, as the interests of justice require.*

* * * * *

(f) RESPONSIBILITY FOR PAYMENT OF MONETARY OBLIGATION RELATING TO ORGANIZATION.—If a sentence includes a fine, special assessment, *restitution* or other monetary obligation (including interest) with respect to an organization, each individual authorized to make disbursements for the organization has a duty to pay the obligation from assets of the organization. If such an obligation is imposed on a director, officer, shareholder, employee, or agent of an organization, payments may not be made, directly or indirectly, from assets of the organization, unless the court finds that such payment is expressly permissible under applicable State law.

* * * * *

(h) DELINQUENCY.—A fine *or payment of restitution* is delinquent if a payment is more than 30 days late.

(i) DEFAULT.—A fine *or payment of restitution* is in default if a payment is delinquent for more than 90 days. [When a fine is in default, the entire amount of the fine is due within 30 days after notification of the default, notwithstanding any installment schedule.] *Notwithstanding any installment schedule, when a fine or*

payment of restitution is in default, the entire amount of the fine or restitution is due within 30 days after notification of the default, subject to the provisions of section 3616A.

* * * * *

CHAPTER 229—POSTSENTENCE ADMINISTRATION

Subchapter B—Fines

[Sec.

- [3611. Payment of a fine.
- [3612. Collection of an unpaid fine.
- [3613. Civil remedies for satisfaction of an unpaid fine.
- [3614. Resentencing upon failure to pay a fine.
- [3615. Criminal default.]

Sec.

- 3611. *Payment of a fine or restitution.*
- 3612. *Collection of an unpaid fine or restitution.*
- 3613. *Civil remedies for collection of an unpaid fine or restitution.*
- 3613A. *Hearing for delinquency.*
- 3614. *Resentencing upon failure to pay a fine or restitution.*
- 3615. *Criminal default.*

[§3611. Payment of a fine] §3611. Payment of a fine or restitution

A person who is sentenced to pay a fine [or assessment shall pay the fine or assessment], *assessment, or restitution, shall pay the fine, assessment, or restitution* (including any interest or penalty), as specified by the Director of the Administrative Office of the United States Courts. Such Director may specify that such payment be made to the clerk of the court or in the manner provided for under section 604(a)(18) of title 28, United States Code. *In the case of restitution, the victim may request that payment be made directly to the victim or the victim's designee.*

[§3612. Collection of an unpaid fine] §3612. Collection of unpaid fine or restitution

(a) NOTIFICATION OF RECEIPT AND RELATED MATTERS.—The clerk or the person designated under section 604(a)(18) of title 28 shall notify the Attorney General of each receipt of a payment with respect to which a certification is made under subsection (b), together with other appropriate information relating to such payment. The notification shall be provided—

* * * * *

(b) INFORMATION TO BE INCLUDED IN JUDGMENT; JUDGMENT TO BE TRANSMITTED TO ATTORNEY GENERAL.—(1) A judgment or order imposing, modifying, or remitting a fine *or restitution order* of more than \$100 shall include—

- (A) the name, social security account number, mailing address, and residence address of the defendant;
- (B) the docket number of the case;
- (C) the original amount of the fine *or restitution order* and the amount that is due and unpaid;
- (D) the schedule of payments (if other than immediate payment is permitted under section 3572(d));
- (E) a description of any modification or remission; [and]

(F) if other than immediate payment is permitted, a requirement that, until the fine *or restitution order* is paid in full, the defendant notify the Attorney General of any change in the mailing address or residence address of the defendant not later than thirty days after the change occurs[.]; and

(G) *in the case of a restitution order, information sufficient to identify each victim to whom restitution is owed. It shall be the responsibility of each victim to notify the Attorney General, by means of a form to be provided by the Attorney General, of any change in the victim's mailing address while restitution is still owed the victim.*

(2) Not later than ten days after entry of the judgment or order, the court shall transmit a certified copy of the judgment or order to the Attorney General.

(c) RESPONSIBILITY FOR COLLECTION.—The Attorney General shall be responsible for collection of an unpaid fine *or restitution* concerning which a certification has been issued as provided in subsection (b). *In the case of restitution, the Attorney General shall ensure that payments are transferred to the victim.* An order of restitution, pursuant to section 3556, does not create any right of action against the United States by the person to whom restitution is ordered to be paid. *Any money received from a defendant shall be disbursed so that each of the following obligations is paid in full in the following sequence:*

(1) *A penalty assessment under section 3013 of title 18, United States Code.*

(2) *Restitution of all victims.*

(3) *All other fines, penalties, costs, and other payments required under the sentence.*

(d) NOTIFICATION OF DELINQUENCY.—Within ten working days after a fine *or restitution* is determined to be delinquent as provided in section 3572(h), the Attorney General shall notify the person whose fine [is delinquent, to inform him that the fine is delinquent.] *or restitution is delinquent, to inform the person of the delinquency.*

(e) NOTIFICATION OF DEFAULT.—Within ten working days after a fine *or restitution* is determined to be in default as provided in section 3572(i), the Attorney General shall notify the person defaulting to inform [him that the fine is in default] *the person that the fine or restitution is in default* and the entire unpaid balance, including interest and penalties, is due within thirty days.

(f) INTEREST ON FINES AND RESTITUTION.—

(1) IN GENERAL.—The defendant shall pay interest on any fine *or restitution* or more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of the judgment. If that day is a Saturday, Sunday, or legal public holiday, the defendant shall be liable for interest beginning with the next day that is not a Saturday, Sunday, or legal public holiday.

* * * * *

(g) PENALTY FOR DELINQUENT FINE OR RESTITUTION.—If a fine *or restitution* becomes delinquent, the defendant shall pay, as a penalty, an amount equal to 10 percent of the principal amount that is delinquent. If a fine *or restitution* becomes in default, the defend-

ant shall pay, as a penalty, an additional amount equal to 15 percent of the principal amount that is in default.

* * * * *

(i) APPLICATION OF PAYMENTS.—Payments relating to fines *and restitution* shall be applied in the following order: (1) to principal; (2) to costs; (3) to interest; and (4) to penalties.

* * * * *

§3613. Civil remedies for satisfaction of an unpaid fine or restitution

(a) LIEN.—[A fine] (1) *FINES*.—A fine imposed pursuant to the provisions of subchapter C of chapter 227 is a lien in favor of the United States upon all property belonging to the person fined. The lien arises at the time of the entry of the judgment and continues until the liability is satisfied, remitted, or set aside, or until it becomes enforceable pursuant to the provisions of subsection (b). On application of the person fined, the Attorney General shall—

[(1)] (A) issue a certificate of release, as described in section 6325 of the Internal Revenue Code, of any lien imposed pursuant to this section, upon his acceptance of a bond described in section 6325(a)(1) of the Internal Revenue Code; or

[(2)] (B) issue a certificate of discharge, as described in section 6325 of the Internal Revenue Code, of any part of the person's property subject to a lien imposed pursuant to this section, upon his determination that the fair market value of that part of such property remaining subject to and available to satisfy the lien is at least three times the amount of the fine.

(2) *RESTITUTION*.—(A) *An order of restitution shall operate as a lien in favor of the United States and crime victims against all property belonging to the defendant or defendants. The lien shall arise at the time of the entry of judgment or order and shall continue until the liability is satisfied, remitted, or set aside, or until it becomes otherwise unenforceable. Such lien shall apply against all property and property interests owned by the defendants at the time of arrest as well as all property subsequently acquired by the defendant or defendants.*

(B)(i) *In a case in which some or all of the victims are not ascertainable at the time the restitution order is issued, the lien shall be entered in the name of all ascertained victims, if any, and the United States in behalf of the unascertained victims.*

(ii) *If the court determines that all victims have been ascertained, no lien interest shall arise in favor of the United States, unless a person entitled to restitution chooses not to participate in the restitution program.*

(iii) *In a case in which persons entitled to restitution cannot assert their interests in the lien for any reason, a lien shall arise in favor of the United States acting in behalf of such persons.*

(iv) *In any action to enforce a restitution lien in which there is more than one lienholder for the subject property—*

(I) the lienholder seeking to enforce the lien must notify all other lienholders; and

(II) *the court shall make a determination, in the interest of justice, of the equitable distribution of the property subject to the lien.*

(3) *JOINTLY HELD PROPERTY.*—If property subject to a lien pursuant to this subsection is held jointly by the defendant and a third party or parties, the court shall make a determination, in the interest of justice, as to—

(A) *the enforceability of the lien; and*

(B) *the proper distribution of the property.*

(b) *EXPIRATION OF LIEN.*—A lien becomes unenforceable and liability to pay a fine expires—

[(1) twenty years after the entry of the judgment; or]

(1) *the later of 20 years after the entry of the judgment or 20 years after the release from imprisonment of the person fined or ordered to pay restitution; or*

(2) *upon the death of the individual fined or ordered to pay restitution.*

The period set forth in paragraph (1) may be extended, prior to its expiration, by a written agreement between the person fined *or ordered to pay restitution* and the Attorney General. The running of the period set forth in paragraph (1) is suspended during any interval for which the running of the period of limitations for collection of a tax would be suspended pursuant to section 6503(b), 6503(c), 6503(f), 6503(i), or 7508(a)(1)(I) of the Internal Revenue Code of 1954 (26 U.S.C. 6503(b), 6503(c), 6503(f), 6503(i), or 7508(a)(1)(I)), or section 513 of the Act of October 17, 1940, 54 Stat. 1190.

(c) *APPLICATION OF OTHER LIEN PROVISIONS.*—The provisions of sections 6323, 6331, 6332, 6334 through 6336, 6337(a), 6338 through 6343, 6901, 7402, 7403, 7424 through 7426, 7505(a), 7506, 7701, and 7805 of the Internal Revenue Code of 1954 (26 U.S.C. 6323, 6331, 6332, 6334 through 6336, 6337(a), 6338 through 6343, 6901, 7402, 7403, 7424 through 7426, 7505(a), 7506, 7701, and 7805) and of section 513 of the Act of October 17, 1940, 54 Stat. 1190, apply to a fine *or restitution* and to the lien imposed by subsection (a) as if the liability of the person fined *or ordered to pay restitution* were for an internal revenue tax assessment, except to the extent that the application of such statutes is modified by regulations issued by the Attorney General to accord with differences in the nature of the liabilities. For the purposes of this subsection, references in the preceding sections of the Internal Revenue Code of 1954 to “the Secretary” shall be construed to mean “the Attorney General,” and references in those sections to “tax” shall be construed to mean [“fine”] “*fine or restitution*”.

(d) *EFFECT OF NOTICE OF LIEN.*—A notice of the lien imposed by subsection (a) shall be considered a notice of lien for taxes payable to the United States for the purposes of any State or local law providing for the filing of a notice of a tax lien. The registration, recording, docketing, or indexing, in accordance with 28 U.S.C. 1662, of the judgment under which a fine *or restitution* is imposed shall be considered for all purposes as the filing prescribed by section 6323(f)(1)(A) of the Internal Revenue Code of 1954 (26 U.S.C. 6323(f)(1)(A)) and by subsection (c).

(e) *ALTERNATE ENFORCEMENT.*—Notwithstanding any other provision of this section, a judgment imposing a fine *or restitution* may

be enforced by execution against the property of the person fined or ordered to pay restitution in like manner as judgment in civil cases[, but in no event shall liability for payment of a fine extend beyond the period specified in subsection (b)].

* * * * *

§3613A. Hearing for delinquency

(a)(1) When a fine or payment of restitution is 60 or more days delinquent, or in default, the court shall, upon the motion of the United States or of any victim named in the order to receive restitution, schedule a hearing to consider the delinquency or default. Upon a finding that the defendant is 60 or more days delinquent in payment, or in default, of a fine or restitution, the court may, pursuant to section 3565, revoke probation or in a term of supervised release or modify the terms or conditions of probation on a term of supervised release, resentence a defendant pursuant to section 3614, hold the defendant in contempt of court, enter a restraining order or injunction, order the sale of property of the defendant, accept a performance bond, enter or adjust a payment schedule, or take any other action necessary to obtain compliance with the order of a fine or restitution.

(2) In determining what action to take, the court shall consider the defendant's employment status, earning ability, financial resources, the willfulness in failing to comply with the restitution order, and any other circumstances that may have a bearing on the defendant's ability to comply with the order of a fine or restitution.

(b)(1) A hearing under this subsection may be conducted by a magistrate judge, subject to de novo review by the court.

(2) To the extent practicable, in a hearing under this section involving a defendant who is confined in any jail, prison, or other correctional facility, proceedings in which the prisoner's participation is required or permitted shall be conducted by telephone, video conference, or other communications technology without removing the prisoner from the facility in which the prisoner is confined.

(3) Subject to the agreement of the official of the Federal, State, or local unit of government with custody over the prisoner, hearings may be conducted at the facility in which the prisoner is confined. To the extent practicable, the court shall allow counsel to participate by telephone, video conference, or other communications technology in any hearing held at the facility.

§3614. Resentencing upon failure to pay a fine or restitution

(a) RESENTENCING.—Subject to the provisions of subsection (b), if a defendant knowingly fails to pay a delinquent fine or restitution the court may resentence the defendant to any sentence which might originally have been imposed.

* * * * *

(c) EFFECT OF INDIGENCY.—In no event shall a defendant be incarcerated under this section solely on the basis of inability to make payments because the defendant is indigent.

CHAPTER 232—MISCELLANEOUS SENTENCING PROVISIONS

Sec.

3661. Use of information for sentencing.

3662. Conviction records.

3663. Order of restitution.

3663A. *Mandatory restitution to victims of certain crimes.*

* * * * *

§ 3663. Order of restitution

[(a)(1) The court] *(a)(1)(A) The court, when sentencing a defendant convicted of an offense under this title or section 46312, 46502, or 46504 of title 49, other than an offense described in section 3663A(c), may order, in addition to or, in the case of a misdemeanor, in lieu of any other penalty authorized by law, that the defendant make restitution to any victim of such offense, or if the victim is deceased, to the victim's estate.*

(B) The court, in determining whether to order restitution under this section, shall consider the amount of the loss sustained by each victim as a result of the offense, and may consider the financial resources of the defendant, the financial needs and earning ability of the defendant and the defendant's dependents, and such other factors as the court deems appropriate. To the extent that the court determines that the complication and prolongation of the sentencing process resulting from the fashioning of an order of restitution under this section outweighs the need to provide restitution to any victims, the court may decline to make such an order.

* * * * *

[(c) If the court decides to order restitution under this section, the court shall, if the victim is deceased, order that the restitution be made to the victim's estate.

[(d) To the extent that the court determines that the complication and prolongation of the sentencing process resulting from the fashioning of an order of restitution under this section outweighs the need to provide restitution to any victims, the court may decline to make such an order.

[(e)(1) The court shall not impose restitution with respect to a loss for which the victim has received or is to receive compensation, except that the court may, in the interest of justice, order restitution to any person who has compensated the victim for such loss to the extent that such person paid the compensation. An order of restitution shall require that all restitution to victims under such order be made before any restitution to any other person under such order is made.

[(2) Any amount paid to a victim under an order of restitution shall be set off against any amount later recovered as compensatory damages by such victim in—

[(A) any Federal civil proceeding; and

[(B) any State civil proceeding, to the extent provided by the law of that State.

[(f)(1) The court may require that such defendant make restitution under this section within a specified period or in specified installments.

[(2) The end of such period or the last such installment shall not be later than—

[(A) the end of the period of probation, if probation is ordered;

[(B) five years after the end of the term of imprisonment imposed, if the court does not order probation; and

[(C) five years after the date of sentencing in any other case.

[(3) If not otherwise provided by the court under this subsection, restitution shall be made immediately.

[(4) The order of restitution shall require the defendant to make restitution directly to the victim or other person eligible under this section, or to deliver the amount or property due as restitution to the Attorney General or the person designated under section 604(a)(18) of title 28 for transfer to such victim or person.

[(g) If such defendant is placed on probation or sentenced to a term of supervised release under this title, any restitution ordered under this section shall be a condition of such probation or supervised release. The court may revoke probation or a term of supervised release, or modify the term or conditions of probation or a term of supervised release, or hold a defendant in contempt pursuant to section 3583(e) if the defendant fails to comply with such order. In determining whether to revoke probation or a term of supervised release, modify the term or conditions of probation or supervised release, or hold a defendant serving a term of supervised release in contempt, the court shall consider the defendant's employment status, earning ability, financial resources, the willfulness of the defendant's failure to pay, and any other special circumstances that may have a bearing on the defendant's ability to pay.

[(h) An order of restitution may be enforced—

[(1) by the United States—

[(A) in the manner provided for the collection and payment of fines in subchapter B of chapter 229 of this title; or

[(B) in the same manner as a judgment in a civil action; and

[(2) by a victim named in the order to receive the restitution, in the same manner as a judgment in a civil action.

[(i)(1) A Federal agency shall immediately suspend all Federal benefits provided by the agency to the defendant, and shall terminate the defendant's eligibility for Federal benefits administered by that agency, upon receipt of a certified copy of a written judicial finding that the defendant is delinquent in making restitution in accordance with any schedule of payments or any requirement of immediate payment imposed under this section.

[(B) custody by a Federal officer or employee, or under the direction of a Federal officer or employee, for purposes incident to any detention described in subparagraph (A) of this paragraph, including transportation, medical diagnosis or treatment, court appearance, work, and recreation;

[but does not include supervision or other control (other than custody during specified hours or days) after release on bail, probation, or parole, or after release following a finding of juvenile delinquency.]

(c) An order of restitution made pursuant to this section shall be issued and enforced in accordance with section 3664.

§3663A. Mandatory restitution to victims of certain crimes

(a)(1) Notwithstanding any other provision of law, when sentencing a defendant convicted of an offense described in subsection (c), the court shall order, in addition to any other penalty authorized by law, that the defendant make restitution to the victim of the offense, or, if the victim is deceased, to the victim's estate.

(2) For purposes of restitution, a victim of an offense that involves as an element a scheme, conspiracy, or pattern of criminal activity means any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court. In no event shall the defendant be named as such representative or guardian.

(3) The court shall also order, if agreed to by the parties in a plea agreement, restitution to persons other than the victim of the offense.

(b) The order of restitution shall require that such defendant—

(1) in the case of an offense resulting in damage to or loss or destruction of property of a victim of the offense—

(A) return the property to the owner of the property or someone designated by the owner; or

(B) if return of the property under subparagraph (A) is impossible, impracticable, or inadequate, pay an amount equal to—

(i) the greater of—

(I) the value of the property on the date of the damage, loss, or destruction; or

(II) the value of the property on the date of sentencing, less

(ii) the value (as of the date the property is returned) of any part of the property that is returned;

(2) in the case of an offense resulting in bodily injury to a victim—

(A) pay an amount equal to the cost of necessary medical and related professional services and devices relating to physical, psychiatric, and psychological care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;

(B) pay an amount equal to the cost of necessary physical and occupational therapy and rehabilitation; and

(C) reimburse the victim for income lost by such victim as a result of such offense;

(3) in the case of an offense resulting in bodily injury that results in the death of the victim, pay an amount equal to the cost of necessary funeral and related services; and

(4) in any case, reimburse the victim for lost income and necessary child care, transportation, and other expenses incurred

during participation in the investigation or prosecution of the offense or attendance at proceedings relating to the offense.

(c)(1) This section shall apply in all sentencing proceedings for convictions of, or plea agreements relating to charges for, any offense—

(A) that is—

(i) a crime of violence, as defined in section 16;

(ii) a felony against property under this title, including any felony committed by fraud or deceit;

(iii) an offense described in section 1365 (relating to tampering with consumer products); or

(iv) an offense described in part D of the Controlled Substances Act (21 U.S.C. 841 et seq.); and

(B) in which an identifiable victim or victims has suffered a physical injury or pecuniary loss.

(2) In the case of a plea agreement that does not result in a conviction for an offense described in paragraph (1), this section shall apply only if the plea specifically states that an offense listed under such paragraph gave rise to the plea agreement.

(3) This section shall not apply if the court finds, from facts on the record, that—

(A) the number of identifiable victims is so large as to make restitution impracticable; or

(B) determining complex issues of fact related to the cause or amount of the victim's losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim is outweighed by the burden on the sentencing process.

(d) An order of restitution under this section shall be issued and enforced in accordance with section 3664.

§ 3664. Procedure for issuing order of restitution

[(a) The court, in determining whether to order restitution under section 3663 of this title and the amount of such restitution, shall consider the amount of the loss sustained by any victim as a result of the offense, the financial resources of the defendant, the financial needs and earning ability of the defendant and the defendant's dependents, and such other factors as the court deems appropriate.

[(b) The court may order the probation service of the court to obtain information pertaining to the factors set forth in subsection (a) of this section. The probation service of the court shall include the information collected in the report of presentence investigation or in a separate report, as the court directs.

[(c) The court shall disclose to both the defendant and the attorney for the Government all portions of the presentence or other report pertaining to the matters or other report pertaining to the matters described in subsection (a) of this section.

[(d) Any dispute as to the proper amount or type of restitution shall be resolved by the court by the preponderance of the evidence. The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense shall be on the attorney for the Government. The burden of demonstrating the financial resources of the defendant and the financial needs of the defendant and such defendant's dependents shall be on the defendant. The burden of

demonstrating such other matters as the court deems appropriate shall be upon the party designated by the court as justice requires.

[(e) A conviction of a defendant for an offense involving the act giving rise to restitution under this section shall estop the defendant from denying the essential allegations of that offense in any subsequent Federal civil proceeding or State civil proceeding, to the extent consistent with State law, brought by the victim.]

§3664. Procedure for issuance and enforcement of order of restitution

(a) *For orders of restitution under this title, the court shall order the probation service of the court to obtain and include in its presentence report, or in a separate report, as the court directs, information sufficient for the court to exercise its discretion in fashioning a restitution order. The report shall include, to the extent practicable, a complete accounting of the losses to each victim, any restitution owed pursuant to a plea agreement, and information relating to the economic circumstances of each defendant.*

(b) *The court shall disclose to both the defendant and the attorney for the Government all portions of the presentence or other report pertaining to the matters described in subsection (a) of this section.*

(c) *The provisions of this chapter, chapter 227, and Rule 32(c) of the Federal Rules of Criminal Procedure shall be the only rules applicable to proceedings under this section.*

(d)(1) *Within 60 days after conviction and, in any event, not later than 10 days prior to sentencing—*

(A)(i) the United States Attorney (or the United States Attorney's delegee), after consulting with the probation service of the court listing the amounts subject to restitution;

(ii) the statement shall be signed by the United States Attorney (or the United States Attorney's delegee) and the victims; and

(iii) if any victim objects to any of the information included in the statement, the United States Attorney (or the United States Attorney's delegee) shall advise the victim that the victim may file a separate affidavit and shall provide the victim with an affidavit form which may be used to do so; and

(B) each defendant shall prepare and file with the probation service of the court an affidavit fully describing the financial resources of the defendant, including a complete listing of all assets owned or controlled by the defendant as of the date on which the defendant was arrested, the financial needs and earning ability of the defendant and the defendant's dependents, and other information the court requires relating to such other factors as the court deems appropriate.

(2) *If the court concludes, after reviewing the report of the probation service of the court and the supporting documentation, that there is a substantial reason for doubting the authenticity or veracity of the records submitted, the court may require additional documentation or hear testimony on those questions. The privacy of any records filed, or testimony heard, pursuant to this section shall be maintained to the greatest extent possible, and such records may be filed or testimony heard in camera.*

(3) If the victim's losses are not ascertainable by the date that is 10 days prior to sentencing as provided in paragraph (1), the United States Attorney (or the United States Attorney's delegee) shall so inform the court, and the court shall set a date for the final determination of the victim's losses, not to exceed 90 days after sentencing. If the victim subsequently discovers further losses, the victim shall have 60 days after discovery of those losses in which to petition the court for an amended restitution order. Such order may be granted only upon a showing of good cause for the failure to include such losses in the initial claim for restitutionary relief.

(4) The court may refer any issue arising in connection with a proposed order of restitution to a magistrate or special master for proposed findings of fact and recommendations as to disposition, subject to a de novo determination of the issue by the court.

(e) Any dispute as to the proper amount or type of restitution shall be resolved by the court by the preponderance of the evidence. The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense shall be on the attorney for the Government. The burden of demonstrating the financial resources of the defendant and the financial needs of the defendant and such defendant's dependents shall be on the defendant. The burden of demonstrating such other matters as the court deems appropriate shall be upon the party designated by the court as justice requires.

(f)(1)(A) In each order of restitution, the court shall order restitution to each victim in the full amount of each victim's losses as determined by the court and without consideration of the economic circumstances of the defendant.

(B) Subject to subsection (k), subparagraph (A) shall not apply if—

(i) the court finds from facts on the record that the economic circumstances of the defendant do not allow the payment of any amount of a restitution order, and do not allow for the payment of the full amount of a restitution order in the foreseeable future under any reasonable schedule of payments; and

(ii) the court enters in its order the full amount of each victim's losses and provides a full restitution award with nominal periodic payments.

(C) In no case shall the fact that a victim has received or is entitled to receive compensation with respect to a loss from insurance or any other source be considered in determining the amount of restitution.

(2) Upon determination of the amount of restitution owed to each victim, the court shall, pursuant to section 3572, specify in the restitution order the manner in which and the schedule according to which the restitution is to be paid, in consideration of—

(A) the financial resources and other assets of the defendant, including whether any of these assets are jointly controlled;

(B) projected earnings and other income of the defendant; and

(C) any financial obligations of the defendant; including obligations to dependents.

(3) A restitution order may direct the defendant to make a single, lump-sum payment, partial payment at specified intervals, in-kind payments, or a combination of payments at specified intervals and in-kind payments.

(4) *An in-kind payment described in paragraph (3) may be in the form of—*

- (A) *return of property;*
- (B) *replacement of property; or*
- (C) *if the victim agrees, services rendered to the victim or a person or organization other than the victim.*

(g)(1) *No victim shall be required to participate in any phase of a restitution order. If a victim declines to receive restitution made mandatory by this title, the court shall order that the victim's share of any restitution owed be deposited in the Crime Victims Fund in the Treasury. In the case of in-kind restitution ordered pursuant to subsection (f)(1)(B) or (F)(3), the court shall order that restitution be made to the State's crime victim compensation program in the State in which the victim resides.*

(2) *A victim may at any time assign the victim's interest in restitution payments to the Crime Victims Fund in the Treasury without in any way impairing the obligation of the defendant to make such payments.*

(h) *If the court finds that more than 1 defendant has contributed to the loss of a victim, the court may make each defendant liable for payment of the full amount of restitution or may apportion liability among the defendants to reflect the level of contribution to the victim's loss and economic circumstances of each defendant.*

(i) *If the court finds that more than 1 victim has sustained a loss requiring restitution by a defendant, the court may provide for different payment schedules to reflect the economic circumstances of each victim. In any case in which the United States is a victim, the court shall ensure that all individual victims receive full restitution before the United States receives any restitution.*

(j)(1) *if a victim has received or is entitled to receive compensation with respect to a loss from insurance or any other source, the court shall order that restitution shall be paid to the person who provided or is obligated to provide the compensation, but the restitution order shall provide that all restitution of victims required by the order be paid to the victims before any restitution is paid to such a provider of compensation.*

(2) *Any amount paid to a victim under an order of restitution shall be reduced by any amount later recovered as compensatory damages for the same loss by the victim in—*

- (A) *any Federal civil proceeding; and*
- (B) *any State civil proceeding, to the extent provided by the law of the State.*

(k) *A restitution order shall provide the following:*

(1) *That the entry, collection, and enforcement of an order of restitution shall be governed by the provisions of this section, subchapter C of chapter 227, and subchapter B of chapter 229.*

(2) *That the defendant shall notify the court and the Attorney General of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution. The Attorney General shall certify to the court that the victim or victims owed restitution by the defendant have been notified of the change in circumstances. Upon receipt of the notification, the court may, on its own motion or the motion of any party, including the victim, adjust the payment schedule, or re-*

quire immediate payment in full, as the interests of justice require.

(l)(1) An order of restitution shall be enforced by the United States in the manner provided for in subchapter C of chapter 227 and subchapter B of chapter 229 of this title, and may be enforced by a victim named in the order to receive the restitution, in the same manner as a judgment in a civil action.

(2) An order of in-kind restitution in the form of services shall be enforced by the probation service of the court.

(m) If a person obligated to provide restitution receives substantial resources from any source, including inheritance, settlement, or other judgment, during a period of incarceration, such person shall be required to apply the value of such resources to any restitution still owed.

CHAPTER 403—JUVENILE DELINQUENCY

* * * * *

§ 5037. Dispositional hearing

(a) If the court finds a juvenile to be a juvenile delinquent, the court shall hold a disposition hearing concerning the appropriate disposition no later than twenty court days after the juvenile delinquency hearing unless the court has ordered further study pursuant to subsection (d). After the disposition hearing, and after considering any pertinent policy statements promulgated by the Sentencing Commission pursuant to 28 U.S.C. 994, the court may suspend the findings of juvenile delinquency, enter an order of restitution pursuant to section 3556, place him on probation, or commit him to official detention. With respect to release or detention pending an appeal or a petition for a writ of certiorari after disposition, the court shall proceed pursuant to the provisions of chapter 207.

* * * * *

(d) If a juvenile has been adjudicated delinquent for an offense that would have been an offense described in section 3663A, 2248, 2259, or 2264 if the juvenile had been tried and convicted as an adult, the restitution provisions of such sections shall apply.

[(d)] (e) If the court desires more detailed information concerning an alleged or adjudicated delinquent, it may commit him, after notice and hearing at which the juvenile is represented by counsel, to the custody of the Attorney General for observation and study by an appropriate agency. Such observation and study shall be conducted on an out patient basis, unless the court determines that inpatient observation and study are necessary to obtain the desired information. In the case of an alleged juvenile delinquent, inpatient study may be ordered only with the consent of the juvenile and his attorney. The agency shall make a complete study of the alleged or adjudicated delinquent to ascertain his personal traits, his capabilities, his background, any previous delinquency or criminal experience, any mental or physical defect, and any other relevant factors. The Attorney General shall submit to the court and the attorneys for the juvenile and the Government the results of the study within

thirty days after the commitment of the juvenile, unless the court grants additional time.

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RULES OF CRIMINAL PROCEDURE FOR THE UNITED STATES DISTRICT COURTS

* * * * *

Rule 32. Sentence and Judgment

(a) IN GENERAL; TIME FOR SENTENCING.—When a presentence investigation and report are made under subdivision (b)(1), sentence should be imposed without unnecessary delay following completion of the process prescribed by subdivision (b)(6). The time limits prescribed in subdivision (b)(6) may be either shortened or lengthened for good cause.

(b) PRESENTENCE INVESTIGATION AND REPORT.—

(1) WHEN MADE.—The probation officer must make a presentence investigation and submit a report to the court before the sentence is imposed, unless:

(A) the court finds that the information in the record enables it to exercise its sentencing authority meaningfully under 18 U.S.C. § 3553; and

(B) the court explains this finding on the record.

Notwithstanding the preceding sentence, a presentence investigation and report, or other report containing information sufficient for the court to enter an order of restitution, as the court directs, shall be required in any case in which restitution is required to be ordered.

* * * * *

(4) CONTENTS OF THE PRESENTENCE REPORT.—The presentence report must contain—

(A) information about the defendant's history and characteristics, including any prior criminal record, financial condition, and any circumstances that, because they affect the defendant's behavior, may be helpful in imposing sentence or in correctional treatment;

* * * * *

(E) in appropriate cases, information about the nature and extent of nonprison programs and resources available for the defendant;

(F) *in appropriate cases, information sufficient for the court to enter an order of restitution;*

[(F)] (G) any report and recommendation resulting from a study ordered by the court under 18 U.S.C. § 3552(b); and

[(G)] (H) any other information required by the court.

* * * * *

VICTIMS OF CRIME ACT OF 1984

[As Amended Through P.L. 104-18, July 7, 1995]

CHAPTER XIV—VICTIM COMPENSATION AND ASSISTANCE

SEC. 1401. This chapter may be cited as the “Victims of Crime Act of 1984”.

CRIME VICTIMS FUND

SEC. 1402. (a) There is created in the Treasury a separate account to be known as the Crime Victims Fund (hereinafter in this chapter referred to as the “Fund”).

* * * * *

(c) Sums deposited in the Fund shall remain in the Fund and be available for expenditure under this [subsection] chapter for grants under this chapter without fiscal year limitation.

(d) The Fund shall be available as follows:

(1) The first \$6,200,000 deposited in the Fund in each of the fiscal years 1992 through 1995 and the first \$3,000,999 in each fiscal year thereafter shall be available to the judicial branch for administrative costs to carry out the functions of the judicial branch under sections 3611 and 3612 of title 18, United States Code.

* * * * *

[(4) The Director may retain any portion of the Fund that was deposited during a fiscal year that is in excess of 110 percent of the total amount deposited in the Fund during the preceding fiscal year as a reserve for use in a year in which the Fund falls below the amount available in the previous year. Such reserve may not exceed \$20,000,000.]

(4)(A) If the sums available in the Fund are sufficient to fully provide grants to the States pursuant to section 1403(a)(1), the Director may retain any portion of the Fund that was deposited during a fiscal year that was in excess of 110 percent of the total amount deposited in the Fund during the preceding fiscal year as an emergency reserve. Such reserve shall not exceed \$50,000,000.

(B) The emergency reserve may be used for supplemental grants under section 1404B and to supplement the funds available to provide grants to States for compensation and assistance in accordance with sections 1403 and 1404 in years in which supplemental grants are needed.

[(e)(1) Except as provided in paragraph (2) any sums awarded as part of a grant under this chapter that remain unspent at the end of a fiscal year in which such grant is made may be expended for the purpose for which such grant is made at any time during the next succeeding fiscal year, at the end of which year any remaining unobligated sums shall be returned to the general fund of the Treasury.

[(2) For the purposes of the application of paragraph (1) to any grant under this chapter with respect to fiscal year 1985, there

shall be substituted in such paragraph “two succeeding fiscal years” for “succeeding fiscal year” and “which period” for “which year”.]

(e) *AMOUNTS AWARDED AND UNSPENT.*—Any amount awarded as part of a grant under this chapter that remains unspent at the end of a fiscal year in which the grant is made may be expended for the purpose for which the grant is made at any time during the 2 succeeding fiscal years, at the end of which period, any remaining unobligated sums shall be returned to the Fund.

* * * * *

CRIME VICTIM COMPENSATION

SEC. 1403. (a)(1) Except as provided in paragraph (2), the Director shall make an annual grant from the Fund to an eligible crime victim compensation program of 40 percent of the amounts awarded during the preceding fiscal year, other than amounts awarded for property damage. Except as provided in paragraph (3), a grant under this section shall be used by such program only for awards of compensation.

* * * * *

(b) A crime victim compensation program is an eligible crime victim compensation program for the purposes of this section if—

(1) such program is operated by a State and offers compensation to victims and survivors of victims of criminal violence, including drunk driving and domestic violence for—

* * * * *

(7) such program does not, except pursuant to rules issued by the program to prevent unjust enrichment of the offender, deny compensation to any victim because of that victim’s familial relationship to the offender, or because of the sharing of a residence by the victim and the offender; [and]

(8) such program does not provide compensation to any person who has been convicted of an offense under Federal law with respect to any time period during which the person is delinquent in paying a fine or other monetary penalty imposed for the offense; and

[(8)] (9) such program provides such other information and assurances related to the purposes of this section as the Director may reasonably require.

(c) *EXCLUSION FROM INCOME FOR PURPOSES OF MEANS TESTS.*—Notwithstanding any other law, for the purpose of any maximum allowed income eligibility requirement in any Federal, State, or local government program using Federal funds that provides medical or other assistance (or payment or reimbursement of the cost of such assistance) that becomes necessary to an applicant for such assistance in full or in part because of the commission of a crime against the applicant, as determined by the Director, any amount of crime victim compensation that the applicant receives through a crime victim compensation program under this section shall not be included in the income of the applicant until the total amount of assistance that the applicant receives from all such programs is suffi-

cient to fully compensate the applicant for losses suffered as a result of the crime.

* * * * *

CRIME VICTIM ASSISTANCE

SEC. 1404. (a)(1) Subject to the availability of money in the Fund, the Director shall make an annual grant from any portion of the Fund made available by section 1402(d)(2) for the purpose of grants under this subsection, or for the purpose of grants under section 1403 but not used for that purpose, to the chief executive of each State for the financial support of eligible crime victim assistance programs.

* * * * *

- [(5) As used in this subsection, the term “base amount” means—
 [(A) \$150,000 for fiscal years 1989 through 1991; and
 [(B) \$200,000 thereafter.]]
 (5) *As used in this subsection, the term “base amount” means—
 (A) except as provided in subparagraph (B), \$500,000; and
 (B) for the territories of the Northern Mariana Islands, Guam, American Samoa, and Palau, \$200,000.*

* * * * *

CHILD ABUSE PREVENTION AND TREATMENT GRANTS

SEC. 1404A. Amounts made available by section 1402(d)(2)(D) and (d)(3). For purposes of this section shall be obligated and expended by the Secretary of Health and Human Services for grants under section 4(d) of the Child Abuse Prevention and Treatment Act.¹ Any portion of an amount which is not obligated by the Secretary by the end of the fiscal year in which funds are made available for allocation, shall be reallocated for award under section 1404(a), except that with respect to funds deposited during fiscal year 1986 and made available for obligation during fiscal year 1987, any unobligated portion of such amount shall remain available for obligation until September 30, 1988.

SEC. 1404B. COMPENSATION AND ASSISTANCE TO VICTIMS OF TERRORISM OR MASS VIOLENCE.

(a) *VICTIMS OF ACTS OF TERRORISM OUTSIDE THE UNITED STATES.—The Director may make supplemental grants to States to provide compensation and assistance to the residents of such States who, while outside the territorial boundaries of the United States, are victims of a terrorist act or mass violence and are not persons eligible for compensation under title VIII of the Omnibus Diplomatic Security and Antiterrorism Act of 1986.*

(b) *VICTIMS OF DOMESTIC TERRORISM.—The Director may make supplemental grants to States for eligible crime victim compensation and assistance programs to provide emergency relief, including crisis response efforts, assistance, training, and technical assistance, for the benefit of victims of terrorist acts or mass violence occurring within the United States and may provide funding to United States*

Attorney's Offices for use in coordination with State victims compensation and assistance efforts in providing emergency relief.

* * * * *

